Adams, George W. & Naomi L. Bussin. "Alternative dispute resolution and Canadian courts: a time for change". Advocates' Quarterly; May, 1995; 17(2): pp. 133-157.
Author argues that Canadian courts need to offer alternative methods of dispute resolution in order to eliminate Canada's dependence on litigation as the sole means of conflict resolution. Article describes processes of negotiation, mediation, mini-trial, early neutral evaluation, summary jury trial and arbitration, and author supports argument by noting that such processes neither do away with the rule of law nor prevent enforcement of legal rights. Author concludes with examples of ADR in Canada and statement that such methods may restore the courts to their position as community centers of conflict resolution.
SUBJ MATTER: INT'L.

Adler, Peter S.. "The Mediator's Handbook: Skills and Strategies for Practitioners." Australian Dispute Resolution Journal. May 1996, 68(2): pp. 160-163.
Author reviews literature by Ruth Charlton & Micheline Dewdney. Author concludes that the work is a good piece of instructional literature on mediation for trainees, students, and practitioners. Author suggests this work as a practical guide for mediators and those involved in mediation.
MED: RELATED PURPOSES- THEORY AND STRATEGIES/ TYPE OF SOURCE: BOOK REVIEW.

Alleyne, Reginald. "Statutory discrimination claims: rights "waived" and lost in the arbitration forum." Hofstra Labor Law Journal. Spring, 1996, 13(2): pp. 381-432.
Article argues that Gilmer v. Interstate/Johnson Lane Corp. holding permitting waiver of court forum for discrimination claim through agreement to arbitrate as condition of employment carries ADR to excess. Author recounts historical movement toward judicial preference of policy favoring arbitration over policy against discrimination before comparing Gilmer's securities industry arbitration forum with other labor and commercial arbitration forums. Conclusions reached are that condition-of-employment arbitration agreements such as in Gilmer are not truly voluntary, that they risk subjecting a party to procedurally deficient arbitration forums and that they have received judicial approval primarily due to the interest in reducing increasing employment claim caseloads.
SUBJ MATTER: CIVIL RIGHTS/ SUBJ MATTER: LABOR-DISCRIMINATION/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Alternative dispute resolution in health care (Thirteenth Annual Health Care Symposium). Whittier Law Review. Spring, 1995, 16(1): pp. 61-86.

Article focuses on the drafting of Alternative Dispute Resolution ("ADR") provisions in health care contracts. Article articulates the uses of ADR in specific health care settings, factors to be considered when a dispute arises, the advantages to arbitration, and the importance of contracting in "self-executing" arbitration clauses. Article is in the form of a panel discussion, thus, various opinions are discusses.
SUBJ MATTER: HOSPITALS.

Altobelli, Tom. "Designing a dispute resolution system for the Sydney 2000 Olympic Games (Australia)." Australian Dispute Resolution Journal. November, 1995, 6(4): pp. 274-83.
Article outlines the kinds of disputes that are likely to arise in the Sydney 2000 Olympic games. Author explains that the cost of such disputes can be high and suggests that developing a comprehensive dispute resolution system in advance can minimize those costs. Author concludes that legislation should be adopted to enable prevention, management and resolution of disputes arising out of the games.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ ECONOMIC ADVANTAGES OF ADR.

Amadei, Robin N.. "Mediation/arbitration: an ADR tool". Colorado Lawyer; March, 1995; 24(3): pp.553-555.
The author discusses the advantages and disadvantages of mediation/arbitration (med-arb). The author highlights when med-arb is appropriate, such as in chronic post-divorce decree cases and business disputes in which time is of the essence. The author discusses what skills are necessary to be an effective med-arb neutral. The author concludes that a neutral should not compromise the empowerment of the parties in an effort to resolve a dispute quickly.
MED: RELATED PROCESSES-GENERAL/ MED: ENCOURAGING COMM AND NEG/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Amernic, Joel and Russell Craig. "Accounting images and the resolution of labor contract costing conflict". Journal of Collective Negotiations in the Public Sector; Spring, 1995; 24(2): pp. 151-171.
Article proposes a framework for understanding how labor contract costing information may affect the resolution of collective bargaining disputes. A public sector case study in which labor contract costing was a disputed feature is analyzed in context of the proposed framework. Author suggests that adoption of an appropriate image of accounting might facilitate nonviolent conflict resolution in collecting bargaining settings characterized by conflict.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Anderson, Andrew D.M.. "Prioritizing an agenda for trade dispute settlement in North America." Journal of International Arbitration. December, 1995, 12(4): pp. 113-34.
Article analyzes binational dispute settlement mechanisms (DSMs) in NAFTA. Author notes presence in NAFTA for provisions to make economies more "transparent," and thus less suspicious to foreign investors. Author feels this model can serve as an aspirational goal for other international arenas, such as the WTO, by showing that traditional mercantilist notions are unnecessary for a successful trade policy.
SUBJ MATTER: INT'L.

"Annual Report of the Colorado Supreme Court Grievance Committee". Colorado Lawyer; May, 1995; 24(5): pp. 1011-1016.
Article explains the Colorado lawyer disciplinary process. Detailed explanation of the process and precedures adhered to by the Grievance Committee. New practices include a Subcommittee on Settlement Conferences which facilitates resolution of a formal disciplinary case via stipulation and a Subcommittee on Mediation which determines whether certain investigations can be referred to a Mediation Committee, allowing complaintants and respondents to resolve matters that otherwise might result in an admonition to the lawyer.
SUBJ MATTER: OTHER PROF MALPRACTICE.

Arbitration procedures for employee disputes. Corporate Counsel's Quarterly. January, 1996, 12: pp. 63-72.
The passage is an excerpt of a compilation of frequently asked questions by employees at Rockwell International. The answers address the procedures at Rockwell International for arbitration of employee disputes. The questions and answers are used to explore the benefits of arbitration versus litigation so that employees can make educated decisions regarding resolution of their disputes.
ARB: BINDING ARB- GENERAL.

Assey, James M., Jr.. "Mum's the word on mediation: confidentiality and Snyder-Falkinham v. Stockburger". Georgetown Journal of Legal Ethics; Spring, 1996; 9(3): pp. 991-1007.
Article examines historical confidentiality protections that are provided through the mediation process. Article discusses the confidentiality of ADR evidence and the Virginia Supreme Court's interpretation of a state statute that requires the confidentiality of mediation proceedings.
MED: RELATED PROCESSES-GENERAL/ CONFIDENTIALITY/ ETHICS: GENERAL.

Atlas, Nancy F.. "Mediation in bankruptcy cases" (part 2). The Practical Lawyer; October, 1995; 41(7): pp. 63-75.
Article offers specific advice on the use of mediation to resolve disputes. Although the article focuses on mediation in the bankruptcy context, many principles discussed in the article can by equally applied in the non-bankruptcy context as well. Issues discussed include identifying the client's interests; preparing the client for mediation; identifying who needs to be present during the mediation; and preserving confidentiality.
MED: RELATED PROCESSES-GENERAL/ SELECTION OF APPROPRIATE PROCESS.

Ayres, Ian. "Further evidence of discrimination in new car negotiations and estimates of its cause." Michigan Law Review. October, 1995, 94(1): pp. 109-147.
Article expands upon a 1991 audit study of new car dealerships in Chicago which indicated that dealerships offered significantly lower prices to white male testers than to similarly situated black and/or female testers. After describing the design of the expanded audit study and reporting the evidence of race and gender discrimination generated by the study, the article uses game theory analysis to distinguish potential causes of the discrimination. The article concludes by suggesting that the types of discrimination uncovered by the audits could be reduced by encouraging dealers to adopt no-haggle sales methods.
NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- GAME THEORY/ NEG: TACTICS, STRATEGIES AND TECHNIQUES-GENERAL/ SUBJ MATTER: CONSUMER.

Bahrami, Bahman. "Australiam Labor Relations: the recent developments." Labor Law Journal. May, 1996, 47(5): pp. 327-341.
Paper examines Australian labor relations and recent developments in the Australian arbitration system. Author offers many suggestions for Australian industries to remain competitive in the international markets. Among these suggestions is an industrial relations system that encourages cooperation between employees and employers to solve disputes on their own.
SUBJ MATTER: LABOR-GENERAL.

Bailey, John D. and Paul Lansing. "The Future of Punitive Damage in Securities Arbitration Cases after Mastrobuono." DePaul Business Law Journal. 1996(8)2: pp. 201-226.
Article presents an overview of the current state of arbitration in securities law. The authors highlight the present split between the circuit courts on the subject of punitive damages in securities cases. Attention is given to those cases where punitive damage awards were given in the Eleventh,

First, Ninth and Eighth Circuits. These awards are contrasted with decisions from the Second and Seventh Circuits where punitive damage awards were not given. Providing a concise discussion of the holdings in the Mastrobuono case, the authors also discuss the ramifications after Mastrobuono. The article includes a brief discussion of waiving punitive damages in customer agreements, punitive damages, and arbitrator training. Having assessed the state of securities arbitration after the Supreme Court's holding in Mastrobuono, the article concludes that the arbitration system in the area of securities needs changing.
SUBJ MATTER: SECURITIES.

Baker, James G.. "Negotiating a collectible bargaining agreement law and strategy - A short course for non-labor lawyers." Labor Law Journal. April, 1996, 47(4): pp. 253-67.
Artile supports proposition that an attorney who has general negotiating experience and who has a working understanding of the law of collectible bargaining negotiations can operate effectively in the collective bargaining arena. Furthermore, author states that by using lawyer-like skills, the attorney can materially assist the client in obtaining a timely agreement which serves the client's needs and fosters the ongoing labor / management relationship, while at the same time minimizing the risks of either a current strike or future litigation. Article explains how the attorney can complete this task by providing the legal background, the strategy and the tactics of collective bargaining.
NEG: TACTICS, STRATEGIES AND TECHNIQUES- GENERAL.

Ball, Carolyn. "Is labor-management cooperation possible in the public sector without a change in the law?" Journal of Collective Negotiations in the Public Sector; Winter, 1996; 25: pp. 23-30.
Article addresses the question of whether successful labor/management cooperation can occur in the public sector despite the existence of the political, constitutional and legal limitations that have been identified as possible constraints on cooperation efforts. Author examines the three possible constraints of: 1) public suspicion of government power and union motives; 2) Fourteenth Amendment due process rights; and 3) statutorily-imposed limitations on scope of bargaining and management rights clauses. She discusses how such limitations were overcome in the collective bargaining between Illinois and AFSCME because there were collaborative arrangements in the contract itself, as opposed to informal agreements. The author therefore concludes that these constraints do not automatically prevents cooperation.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Ballot, Michael. "Labor relations in Russia and Eastern Europe". Labor Law Journal; March, 1995; 46(3): pp.169-174.
The author discusses the events between 1989-1991 and their effect on labor relations in what was once the Soviet Union and the Eastern bloc countries. The author discusses that Russia's new trade unions are growing and where the unions are independent they bargain vigorously with the government. Independent trade unions have progressed at varying rates in Eastern bloc countries with the development of democracy. The author concludes that the labor and economic changes are irreversible and the future includes democratic and independent labor movements and unions.
NEG: USE OF BARGAINING TEAMS.

Bamodu, Gbenga. "Jurisdiction and applicable law in transnational dispute resolution before the Nigerian courts". International Lawyer; FALL, 1995; 29: pp. 555-575.
Article examines the basis upon which Nigerian courts assume jurisdiction for the resolution of disputes with transnational connections and their disposition towards the enforcement of jurisdiction clauses in international commercial agreements. Author also examines the way in which the courts determine the law applicable for the resolution of disputes when the parties themselves have an agreement specifying the applicable law.
SUBJ MATTER: INT'L.

Bar-Yaacov, Nomi. "Diplomacy and human rights: the role of human rights in conflict resolution in El Salvador and Haiti". The Fletcher Forum of World Affairs; Summer-Fall, 1995; 19: pp. 47-63.
Article analyzes the role of human rights in preventative diplomacy and post-conflict peace-building in the context of the United Nations' operations in Haiti and El Salvador and the lessons that they offer for future UN operations. Author asserts that parties to a conflict can learn to respect each other as morally and substantively equal if human rights are addressed preemptively in areas of potential conflict, early on in cases of existing conflict, and during a process aimed at ending a conflict.
MED: PSYCH FACTORS/ INST NATURE: GOV'T ENTITIES/ SUBJ MATTER: INT'L.

Barrett, Robert C.. "Mediator certification: should California enact legislation? (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 617-33.
Article discusses the pros and cons of the Senate Bill 1428 as proposed by Senator Russell. Although the bill has been defeated, author suggests that this is a starting base for the discussion on legislation for mediator certification. Author suggests that there should be some entity responsible

for the monitoring implementation of any future litigation and recommend changes if it finds that the laws are not properly working. His proposal is that this maintenance of flexability and the careful monitoring of how the program is working is essential to the survival of any future litigation.
MED: RELATED PROCESSES-GENERAL.

Barton, Densie M.. "The evolution of punitive damage awards in securities arbitration: has the use of punitive damages rendered the arbitration forum inequitable". Tulane Law Review; May 1996; 70(5): pp. 1537-1568.
Author contends that punitive damage awards are appropriate for securities arbitration. Author maps out advantages and disadvantages for allowing punitive damage awards in securities arbitration. Author concludes that although punitive damages are appropriate in arbitration, reforms that are needed include: limited judicial review of awards and punitive award caps.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: SECURITIES.

Bass, Stuart L.. "Recent court decisions expand role of arbitration in harassment and other Title VII cases." Labor Law Journal. January, 1995, 46(1): pp. 38 - 47.
Article discusses the use of arbitration in employment discrimination claims as an emerging trend. The author reviews the pro-arbitration legislative intent of Congress and recent Supreme Court and circuit court cases that support the enforcement of arbitration agreements for claims arising under anti-discrimination statutes. He argues that the arbitrator's specialized knowledge of various employment settings renders arbitration an effective dispute resolution method, especially given the increasing racial and gender diversity in the workplace.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: LABOR-DISCRIMINATION.

Beach, John A.. "The rise and fall of the billable hour". (Symposium on Business Dispute Resolution: ADR and Beyond). Albany Law Review; SPRING, 1996; 59(3): pp. 941-50.
Article explains the reasons behind the billable hour's popularity as a way to value legal services. Author describes the idiosyncrasies, vanities, egotism, lack of imagination, and greed of (a) lawyers, and (b) people. Author concludes that despite the billable hour's virtue of simplicity and objectivity, lawyers should establish new billing practices to help restore client trust and confidence.
ETHICS: GENERAL.

Beadles, Nicholas A., II and Clyde Scott. "Professionals under the Labor Management Relations Act: lessons from the health care industry". Journal

of Collective Negotiations in the Public Sector; Fall, 1995; 24(4): pp. 285-299.
Article, using examples of hospital job classifications, summarizes and explicates the criteria the National Labor Relations Board applies in determining the professional status of an employee under the National Labor Relations Act. Authors conclude that although some guidelines exist, the lack of a bright line standard coupled with the importance of professional status in determining bargaining unit composition and union election outcomes ensures that the issue of professional status will continue to be litigated.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: HOSPITALS.

Beehler, John M.. "Mediating with the IRS." The Tax Adviser. May 1996, 27(5): pp. 281-287.
Author explains the one-year test mediation program the IRS instituted on October 30, 1995. Author contends that the mediation procedures for administrative appeals and for docketed cases in the Tax Court were a good beginning. Author suggest expanding the scope of cases eligible for mediation. Author points out advantages and disadvantages for taxpayers using mediation and for practioner seeking to serve as mediators.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: TAX.

Belzer, Michael H.. "Collective bargaining after deregulation: do the Teamsters still count?" Industrial and Labor Relations Review. July, 1995; 48(4): pp. 636-655.
Article examines the union effect on wages, the restructuring effect and the conditions in trucking after economic deregulation. Author explains his basis for the empirical study, demonstrates general trends in the trucking industry through figures and calculations, and analyzes the effects of industry segmentation at the level of the firm. Article provides a discussion on the assumption of risk factors and the mileage facto. Finally, the author presents his conclusions from the study.
SUBJ MATTER: GENERAL/ ECONOMIC ADVANTAGES OF ADR.

Ben Abderrahmane, Dahmane. "Saudi Arabia's ratification of the New York Convention." Middle East Executive Reports. March, 1995, 18(3): pp. 9-13.
The author discusses the effects and consequences of the application of the New York Convention and Saudi Arabia arbitration law. The author comments on the freedom of procedure under the New York Convention and the equal treatment of a foreign arbitral award in Saudi Arabia. The author concludes that Saudi Arabia's ratification of the New York Convention is a step forward in international arbitration that is tempered by the Diwan Al Mazalem's answers to the questions raised by its application.

The author suggests that the Saudi Arabian authorities should incorporate the New York Convention into the domestic law.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: INT'L.

Benson, Bruce L.. "An exploration of the impact of modern arbitration statutes on the development of arbitration in the United States." Journal of Law, Economics, and Organization. October, 1995, 11(2): pp. 479-501.
Author argues that the historical evidence supporting the conclusion that legal sanctions are prerequisites for effective arbitration are actually historical assumptions and myths. Author supports this argument with historical evidence showing that arbitration was widely practiced in the face of hostility from common law judges, that judicial attitudes toward arbitration have been changing, and that strong political impetus for several modern arbitration statutes came from bar associations. Author concludes that legal sanctions are not a prerequisite for effective arbitration.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Benson, Robert E.. "The power of arbitrators and courts to order discovery in arbitration". Colorado Lawyer; March, 1996; 25(3): pp. 35-38.
Article, which is the second of a two part series, examines the power of courts to order and discovery in arbitration. Author states that Part I of the series explored the consensual nature of the arbitral process and an arbitrator's power to order discovery in arbitration. Author discusses how provisions of the Federal Arbitration Act and the Colorado Uniform Arbitration Act relate to a court's power to order and enforce discovery in arbitration. Author concludes that the court's role in discovery should be limited to enforcing the arbitrator's decisions in the same circumstances and with the same deference as an appellate court gives to a trial court.
ARB: JUDICIAL REVIEW.

Bentham, Robert and Ansley Boyd Barton. "Alternative dispute resolution; ancient models provide modern inspiration." Georgia State University Law Review. April 1996: pp. 623-51.
Article examines ancient Japanese, Polynesian and African methods of dispute resolution. Author asserts that these systems provide a useful model for understanding the present and future evolution of alternative dispute resolution, both in Georgia and across the United States. Article concludes that the current legal system is mired in deep suspicion and isolation and that restorative justice and honest communication are needed.
COMPARISONS: HISTORICAL.

Berkson, Lestor H. and Deborah A. Palmer. "Demise of binding arbitration in nevada - part ii." Nevada Lawyer. April 1996, 4: pp. 10-13.
Article reviews the impact on arbitration of two recent decisions by the Nevada Supreme Court, where the Court adopted a non-statutory, common law concept of arbitration awards under a "manifest disregard of the law" standard. Authors conclude that the net effect of these decisions is to gut the Uniform Act. Authors advocate legislative action to restore the use of binding arbitration in Nevada.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Birke, Richard; Dauer, Edward A.. "Is alternative dispute resolution preventive?" Preventive Law Reporter; Spring, 1996; 15(1): pp. 31-32 & 46.
Article examines whether ADR is a preventive law measure. One author discusses that arbitration is preventive because it is done through contracting provisions and provides guidance to the eventual decision-maker. Other author concludes that ADR and preventive law are intensely related, but remain distinctive.
SUBJ MATTER: GENERAL.

Bishop, Doak. "The United States' Perspective Toward International Arbitration with Latin American Parties." International Law Practicum. Autumn, 1995, 8(2): pp. 63-82.
Article describes the changing attitudes in Latin America toward arbitration of international commercial disputes. Author attributes the historical prejudice against international arbitration in many Latin American nations to the influence of the Calvo Doctrine, a principle which limits redress available for aliens to that afforded to nationals before local authorities. Author bases increasingly favorable reception of arbitration over the past twenty years upon commercial interaction with countries which thoroughly accept arbitration, particularly the United States. Author explains international commercial arbitration under several formats, including NAFTA, the Inter-American Commercial Arbitration Commission, the New York Convention and the Federal Arbitration Act.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: INT'L/ SUBJ MATTER: COMMERCIAL.

Black, M.E.J.. "The courts, tribunals and ADR: assisted dispute resolution in the Federal Court of Australia". Australian Dispute Resolution Journal; May 1996; 7(2): pp. 138-152.
The Honorable MEJ Black outlines ADR, with an emphasis on mediation, in the Federal Court of Australia. Author states that Federal Court in Australia intends to develop further court-annexed mediation. Author

discusses responses to an evaluation program for mediators. Author also reviews a 1992 pilot program of early neutral evaluation (ENE) in the Federal Court of Australia.
MED: OTHER JUDICIAL SETTLEMENT DEVICES/ JUDICIAL PARTICIPATION.

Blancero, Donna and George W. Bohlander. "Minimizing arbitrator 'reversals' in discipline and discharge cases". Labor Law Journal; October, 1995; 46(1): pp. 616-621.
Article seeks to enhance the effectiveness of arbitration to resolve employee-management disputes. To that end, the article classifies and then discusses the major reasons set forth by arbitrators when they reverse or modify managerial action in discipline or discharge cases. The article concludes by offering practical suggestions for evaluating disciplinary cases bound for arbitration.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Blanpain, Roger. "Employee Privacy Issues: Belgian Report" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 38-44.
Article discusses the need in Belgium for the balance between free access of employers to information about individual workers in furtherance of safety and economic competitiveness on the one hand, and employee privacy on the other. Author explains the manner in which the Belgian constitutional right of privacy applies to issues such as AIDS and drug testing, genetic examinations and database usage. Author concludes that, although employees are in the weaker position of the employment relationship, additional labor legislation can protect them and still provide adequate information needed to improve business management.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Blum, Darren C.. "Punitive power: securities arbitrators need it." Nova Law Review. Spring, 1995, 19(3): pp. 1063-81.
Article examines leading case law that differ in holding (and rationale) on the question of whether arbitrators have the power to award punitive damages. Article relies upon a recent Supreme Court decision contending that arbitrators do have such power, specifically when the nature of the conflict is in the field of securities regulation. Author contends that the arbitrator's powers to award punitives in arbitration facilitate the arbitration process. Author concludes that the Supreme Court's holding was limited in its application (securities) but the rationale may be applied more broadly.
SUBJ MATTER: SECURITIES.

Bock, Richard A.. "Multiemployer bargaining and withdrawing from the association after bargaining has begun: 38 years of "unusual circumstances" under Retail Associates. Hofstra Labor Law Journal. Spring, 1996, 13(2): pp. 519-556.
Note examines the "unusual circumstances" exception allowing individual members to withdraw from multiemployer bargaining after bargaining has already commenced. Overview of situations held to constitute acceptable and unacceptable unusual circumstances claims is presented. Focus is on conflict of interest claims, economic circumstances claims, claims of impasse and fragmentation of multiemployer unit claims. Note concludes that while limited, the unusual circumstances exception continues to present intriguing issues.
SUBJ MATTER: LABOR-GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Bohlander, George W.. "Arbitration and Gender: An Analysis of Cases Taken to Arbitration in the Public Sector." Journal of Collective Negotiations in the Public Sector. Summer, 1995, 24: pp. 207-218.
Article reports on recent research concerning gender bias in the grievance arbitration process. Author reports on arbitration outcomes and the sex of the participants in public sector arbitration cases. Author argues that there is a potential sex bias, but no dispositive explanation for the bias. Author suggests that women become less aggressive at the arbitration level, and therefore do not win as many cases and get as many compromises as male counterparts.
ARB: BINDING ARB- GENERAL/ FAIRNESS.
Bohlander, George W.. "The Federal Service Impasses Panel: a Ten-Year Review and Analysis". Journal of Collective Negotiations in the Public Sector. Summer, 1995, 24: pp. 193-205.
Article describes The Federal Service Impasses Panel, which is a branch within the Federal Labor Relations Authority. Author describes the Panel, which serves as the major administrative agency for resolving federal sector bargaining impasses, and has broad authority to resolve collective bargaining disputes. Author reports on data of panel activity from 1983-1993, using FLRA annual reports, telephone interview, and other administrative data. Author also describes the activity of case loads.
INST NATURE: GOV'T ENTITIES/ SUBJ MATTER: LABOR-GENERAL.
Bompey, Stuart H. and Andrea H. Stempel. "Four years later: a look a compulsory arbitration of employment discrimination claims after Gilmer v. Interstate/Johnson Lane Trucking Corp". Employee Relations Law Journal; Autumn, 1995; 21: pp. 21-49.
Article examines post-Gilmer law with respect to the arbitration of employment discrimination claims. Authors analyze recent and pending

challenges to the adoption and use of mandatory or "predispute" arbitration agreements in the employment context and indentify the factors that appear to dictate whether the court will find the agreement enforceable. Note also offers information to assist parties in deciding whether to require that certain disputes be resolved through arbitration and practical tips on how to get them there.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: LABOR-DISCRIMINATION.

Bone, Robert G.. "Lon Fuller's theory of adjudication and the false dichotomy between dispute resolution and public law models of litigation. Boston University Law Review. November, 1995, 75(5): pp. 1273-1324.
Article presents an historical and theoretical analysis of Lon Fuller's work. Author challenges the prevailing dispute resolution accound of Fuller's theory of adjudication and contends that the dispute resolution/public law dichotomy is misleading. Author concludes that the dispute resolution misreading of Fuller must be abandoned so that fuller's complex theory of adjudication can be properly understood.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: GENERAL.

Boo, Lawrence and Charles Lim. "Overview of the International Arbitration Act and subsidiary legislation in Singapore." Journal of International Arbitration. December, 1995, 12(4): pp. 75-89.
Article examines arbitration in Singapore, with its strong emphasis on judicial intervention. Author notes that this model is inconsistent with the trend in other countries for a more informal process. Author suggests that lawyers and businessmen in Singapore embrace new legislation, the International Arbitration Act, which will enable Singapore to conform with other countries, and thus encourage international trade.
SUBJ MATTER: INT'L.

Bourne, Sumner A.. "International commercial representation agreements: a bibliography of the secondary literature". Boston University International Law Journal; Fall, 1995; 13: pp. 467-480.
Article provides a bibliography of secondary English language sources regarding foreign commercial laws. Author lists the sources by region, and some specific legal areas, to aid business attorneys who deal with international commercial transactions. The author states that while a complete understanding of foreign law is not possible, this bibliography is meant to give the practitioner an excellent starting point for his or her research.
SUBJ MATTER: INT'L.

Bouzari, Eloise Henderson. "The public policy exception to the enforcement of international arbitral awards: implications for post-NAFTA jurisprudence" (Symposium on International Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 205-21.
Note focuses primarily on the 1958 United Nations Conventions on the Recognition and Enforcement of Arbitral Awards (New York Convention), recognizing that successful parties to arbitration have more frequently sought enforcement in United States courts via the New York Convention than under other, more recently adopted, conventions. Note addresses the public policy exceptions vacating international arbitral awards in light of the North American Free Trade Agreement and post-NAFTA jurisprudence. Author concludes that the historical judicial restraint in this area of international arbitration may be lessening due to the excellent opportunity for judges to reexamine the utility of the public policy defense in enforcing arbitral awards.
SUBJ MATTER: INT'L.

Bowal, Peter. "The new Ontario judicial alternative dispute resolution model". Alberta Law Review; October, 1995; 34(1): pp. 206-214.
Article examines a new ADR pilot project implemented by the Ontario Court of Justice (General Division). The project, which takes place in Toronto, seeks to avoid civil litigation by referring cases to ADR at the pre-trial stage of the litigation. After describing the project's referral and dispute resolution process, the article sets forth the project's advantages and disadvantages. The article concludes by asserting that time will be the best indicator as to whether the project successfully reduces the number of cases that go to trial.
NON-BINDING RECOMMENDATION PROC- GENERAL/ INST NATURE: JUSTICE SYSTEM- OTHER CIVIL COURTS.

Brafford, Anne. "Arbitration clauses in consumer contracts of adhesion: fair play or trap for the weak and unwary?". The Journal of Corporation Law; Winter, 1996; 21(2): pp. 331-362.
Article discusses the adequacy and desirability of arbitration generally and the fairness of using adhesion contracts to bind parties to arbitration before disputes arise. Note analyzes relevant law and soundness of developing a contract defense. Author recommends using theory of cooperation or fair play.
SUBJ MATTER: CORPORATE/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Brand, Phil. "IRS alternative dispute resolution techniques." Tax Notes. April 22, 1996: pp. 529-535.

Article discusses the changing IRS compliance model and the increased willingness of the IRS to use alternative dispute resolution techniques outside the traditional examination, appeals, litigation and collective compliance track. Highlights of several methods of ADR are featured along with ideas on when their use might be beneficial to taxpayers. Author concludes that the move towards increased ADR use by the IRS ids a welcome trend in lessening the cost of compliance for taxpayers.
SUBJ MATTER: TAX.

Brandt, Michael G.; French, Mark H.. "Revised competent authority procedures expand availability but more guidance is needed". The Journal of Taxation; October, 1995; 83: pp. 223-228.
Article outlines proposed changes to the Competent Authority Procedures contained in all current United States tax treaties. Authors support the revisions of these mutual agreement procedure articles that provide a means of contesting actions by one or both of the countries that may result in taxation not in accordance with the treaty. Also, while authors cite the failure of the revisions to deal with some additional issues, they assert that the adoption of the new accelerated Competent Authority procesd, the Simultaneous Appeals procedure and the increase in the small-case ceilings are steps in the right direction.
SUBJ MATTER: INT'L/ SUBJ MATTER: TAX.

Breen, J. Daniel. "Mediation and the magistrate judge" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 1007-1029.
Article discusses the role of recent amendments to Federal Rule of Civil Procedure 16 and the enactment of the Civil Justice Reform Act of 1990 in encouraging alternative dispute resolution procedures. Author comments on the various methods of ADR used by magistrate judges, including mediation, arbitration, early neutral evaluation and SJTs. Author also discusses the role of the parties, attorneys and magistrate judges in the pretrial settlement conference.
NON-BINDING RECOMMENDATION PROC- EARLY NEUTRAL EVAL.

Brenner, Michelle. "The Mediators Handbook: Skills and Stratagies for Practitioners." Australian Dispute Resolution Journal. May 1996, 7(2): pp. 163-164.
Author reviews literature by Ruth Charlton & Micheline Dewdney. Author describes book as a "how to guide" on mediation. Author characterizes the work as easy-to-read and organized in such a way that is user-friendly. Author states that the work fills a void left out by traditional education.

MED: RELATED PROCESSES-GENERAL/ TYPE OF SOURCE: BOOK REVIEW.

Bridger, Alfred G., Jr.. "The Dispute Resolution Center in Richmond." Virginia Bar Association Journal. Winter, 1996, 22(1): pp. 4-6.
Article describes the cooperative effort between Better Business Bureaus and Bar Associations in Virginia that led to the establishment of the Dispute Resolution Center in the city of Richmond. Author reviews the Center's general, tailored, and school-based training programs as well as services offered to aid resolution of community and family conflicts. To further the Center's mission of working with people to find non-adversarial, non-violent solutions to conflict, author recommends continued expansion of the Center through recruitment and education of additional volunteer mediators and arbitrators.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: GENERAL/ SUBJ MATTER: COMMUNITY.

Brienza, Julie. "Accuser, accused meet face-to-face". Trial; July, 1995; 31(7): pp. 654-656.
Article describes voluntary victim-offender mediation programs where the victims and offenders are able to communicate with a mediator present. Additionally, the possibility of allowing mediation between victims and perpetrators of serious and violent crimes is discussed. The goals of these programs are also explained.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: CRIMINAL.

Brienza, Julie. "Federal EEOC says workers deserve recourse, not mandatory arbitration". Trial; August, 1995; 31(8): pp. 16-18.
Article provides a glimpse of the EEOC's position that mandatory arbitration clauses may be unfair to employees. A list of cases in which these mandatory arbitration agreement provisions have been struck down by circuit courts is given. Author suggests that federal courts will take action to prevent these internal resolution programs from hampering any employee to seek remedies afforded by the civil rights laws.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: LABOR-GENERAL.

Brody, Reed. "The United Nations and Human Rights in El Salvador's "Negotiated Revolution" Harvard Human Rights Journal. Spring, 1995, 8: pp. 153-178.
Article describes the development of a pluralist democracy in El Salvador. Author examines the role of the United Nations Observer Mission in El

Salvador, which developed a human rights agreement in the peace settlement framework. Author describes the role of ONUSAL in the peace accords and the monitoring process, which has resulted in institutional and constitutional reforms.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ NEG: TACTICS, STRATEGIES AND TECHNIQUES- GENERAL/ NEG: CULTURAL CONSIDERATIONS/ INST NATURE: GOV'T ENTITIES.

Browne, Kevin. "Arbitration: a claim too far?" Solicitors Journal. April 19, 1996, 15: pp. 388-89.
Article discusses the implications of the Court of Appeals' (England) decision in Afzal v Ford Motor Co Ltd. Case held that the court may order attorney's fees in response to a party's attempt to inflate their claim beyond the mandatory arbitration level, or in response to a defendant who files a speculative and unsupportable defense merely to insure referral to arbitration. Author advocates extreme caution in stating a claim to prevent issuance of costs pursuant to this decision.
ARB: MANDATORY, COURT-ANNEXED- FEES & FUNDING.

Bruno, J.D.. "Negotiating private label agreements." Michigan Bar Journal. December, 1995, 74(12): pp. 1292-94.
Article presents various policy considerations to be contemplated by attorneys in negotiating private label agreements. Author then uses these considerations in setting up a list of procedures that a business can implement to incorporate the legal policies while still adhering to established business principles. Author provides unique and refreshing approach to traditional role of corporate counsel by providing lists of things that a company negotiating private label agreements can do, as opposed to an abstract list of warnings about things a company can not do.
SUBJ MATTER: COMMERCIAL.

Bryant, Taimie L.. "Vulnerable Populations in Japan: Family Models, Family Dispute Resolution and Family Law in Japan." UCLA Pacific Basin Law Journal. 1995, 14(1): pp. 1-27.
Article provides examples of ways in which mediation can be used in dispute resolution to increase recognition of values held by members of Japanese society. Based on anthropological data conducted 1981-1984 and in 1992, the article discusses the potential of Japan's current system of family court mediation and how it embodies recognized societal values.
SUBJ MATTER: INT'L/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Buckley, Ross P.. "Cross-cultural commercial negotiations". Australian Dispute Resolution Journal; August, 1995; 6(3): pp. 179-186.

Article presents three factors which facilitate effective and efficient cross-cultural negotiations. Author provides examples of utilizing these factors in practical situations to reach desired settlements. The importance of effective listening is emphasized and the process by which effective listening is accomplished is described.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: INT'L/ COMPARISONS: CROSS-CULTURAL.

Buckley, Shalu Tandon. "Practical concerns regarding the arbitration of statutory employment claims: questions that remain unanswered after Gilmer and some suggested answers. "Ohio State Journal on Dispute Resolution. Winter,1996, 11(1): pp. 149-185.
Article discusses arbitration of statutory employment claims in the non-union setting. Author notes that arbitration of such claims was authorized by the U.S. Supreme Court in Gilmer v. Interstate/Johnson Lane Corp. and discusses the questions that have arisen in light of that decision. Author describes the current system of arbitration in the labor-management context. Author concludes by addressing the unique issues arising from arbitration of statutory employment claims in the non-union setting and offers suggestions for developing a fair and efficient procedure in this area.
ARB: BINDING ARB- GENERAL.

Bulow, Lucienne Carasso. "The revised arbitration rules of the Society of Maritime Arbitrators." Journal of International Arbitration. March, 1995, 12(1): pp.87-99.
The author discusses the revisions made by the Society of Maritime Arbitrators in its rules for standard arbitration. The author supports the provision for consolidation of disputes because it is cost-effective. The author concludes that the changes to the SMA Rules should help disputants in finding a more effective and less expensive way of resolving maritime disputes in standard arbitration. The article includes a copy of the revision to the SMA Rules.
ARB: PREPARATION/ SUBJ MATTER: MARITIME.

Burick, Lawrence T.. "The unsecured creditor's adequate protection rights in the single asset area: did the 1994 Bankruptcy Code amendments redress lender grievances?" Commercial Law Journal. Winter, 1995, 100(4): pp. 437-470.
Article discusses the Bankruptcy Reforem Act of 1994, which amended sections 552(b) and 363 of the Bankruptcy Code in an effort to level the playing field for undersecured creditors seeking a share of the income stream from rental or lodging property involved in single-asset bankruptcy reorganizations. Author discusses the pre-amendment scenario in which creditors were limited to portions of the income stream constituting cash

collateral under section 363 and meeting section 552(b) guidelines, which were greatly affected by state-law definitions of income.
SUBJ MATTER: COMMERCIAL.

Burke, Frederick. "Vietnam's new labor code." East Asian Executive Reports. January, 1995, 17(1): pp. 9-13.
Article provides a summary of the Labor Code of the Socialist Republic of Vietnam (the Code). Highlights of the Code include provisions for labor contracts, collective bargaining, salary and wages, subcontracting, working conditions, workers compensation and foreign employers/employees. The Code also mandates the adoption of mediation and arbitration structures for resolving labor disputes.
SUBJ MATTER: INT'L/ SUBJ MATTER: LABOR-GENERAL.

Burke, Robert E. and Briam F. Walsh. "NAFTA binational panel review: should it be continued, eliminated or substantially changed?" (Selected Articles from the U.S. Court of International Trade Ninth Judicial Conference). Brooklyn Journal of International Law. January, 1995, 20(3): pp. 529 - 62.
Article discusses the operation of binational panels that review and adjudicate trade disputes arising out of each NAFTA participant's local antidumping and countervailing duty laws. The authors contend that many of the problems predicted by the Court of International Trade Bar Association (CITBA) have been borne out in practice during the five years subsequent to passage of the North American Free Trade Agreement. The authors survey the pros and cons of the review system and make recommendations for specific improvements if use of the panels is to continue.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: INT'L.

Buse, Michele M.. "Contracting employment disputes out of the jury system: an analysis of the implementation of binding arbitration in the non-union workplace and proposals to reduce the harsh effects of a non-appealable award" (comment). Pepperdine Law Review; May, 1995; 22(4): pp. 1485-1539.
Article examines the expanding use of ADR in the employment context and discusses the concerns which arise when arbitration agreements are not bargained for yet remain binding nonetheless. Author emphasizes the need for caution among employers, employees and the legal system when faced with arbitration clauses and suggests various procedures which may be implemented to ensure that the arbitration agreement is truly bargained for at its implementation stage. Article concludes with notion that need for such procedures is becoming greater as Congress continues to grant more statutory rights to employees.

ARB: BINDING ARB- GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Cantwell, Brian and Margaret Nunnerly. "A new spotlight on family mediation?" (Government white paper on divorce reform). Family Law. March 1996, 26: pp. 177-80.
Article discusses the Family Law Bill put forward in the Queen's Speech in November 1995. The Family Law Bill received much favorable attention as it progresses through the preliminary process because the principle part of the Bill proposed to reduce the waiting time for most divorces to one year and to remove the motion of "fault" as a ground for divorce. The Bill also proposed that mediation take a recognized and center stage place within the family law system. Article discusses the effects of the Bill on children and the quality of mediation and also addresses ethical concerns of the expansion of mediation services to families and courts.
MED: PUBLIC POLICY DIALOGUE.

Carbone, Michael P.. "Negotiating a letter of intent for an anchor store lease". The Practical Real Estate Lawyer; May, 1995; 11(3): pp. 85-94.
Article promotes the use of letters of intent when negotiating commercial leases as more than a preliminary agreement. Experience has shown that letters of intent prepared in sufficient detail can become a powerful negotiation tool. By addressing issues at the beginning of the negotiating process, time will be saved and basic elements of the deal will be agreed upon early. Author concludes that detailed letters of intent will save the parties much time, expense and aggravation when it comes time to negotiate the lease.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL.

Carey, Teresa V.. "Credentialing for Mediators- to be or not to be?" (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 635-45.
Article commends Senator Russell for his work in trying to implement a program to examine this issue of certification and mediators, however, it cautions that the title "Certified Mediator" could mislead the public into thinking that the mediator is an expert in that field. Author alleges that the urgency for the level of certification call for in bill 1428 has not been proven an that acceptance of this bill might undermine developments in this rapidly growing field. Author discusses the problems and suggests a more thorough evaluation then the proposed legislation.
MED: RELATED PROCESSES-GENERAL.

Carlton, Patrick W.. "Interest-based collective bargaining at Youngstown State University: a fresh organizational approach". Journal of Collective Negotiations in the Public Sector; Fall, 1995; 24(4): pp. 337-347.
Article provides a study of the collective bargaining movement at Youngstown State University in Ohio which in 1993 made a transition from traditional adversarial or position-based bargaining to interest-based bargaining. Author describes interest-based bargaining techniques (such as identification of mutual interests and use of complete informational disclosure to create mutual trust) used by faculty union and management teams to reach a three-year agreement. Author supports the use of interest-based bargaining for improving labor relations in both the public and private sectors.
NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- COOPERATIVE/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: EDUCATION.

Chance, Chester B. and Allison E. Gerencser. "Screening family mediation for domestic violence." Florida Bar Journal. April, 1996; 70(4): pp. 54-57.
Article suggests that although mediation is an attractive alternative in family disputes because it empowers the parties to devise their own agreements, meditation may be inapporpriate or problematice in cases that involve domestic violence or other forms of abuse. A screening process is discussed which attempts to explain how to decipher between chronic domestic abuse and cases in which abuse may be present, but the parties are still able to bargain equally.
MED: PUBLIC POLICY DIALOGUE.

Chantilis, Peter S.. "Mediation U.S.A." (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 1031-1083.
Article surveys mediation statutes, rules and practices throughout the fifty states. Author notes that mediation has emerged as the most prevalent form of ADR in courts today. This trend toward mediation has taken various forms, including both voluntary and court-annexed procedures.
MED: ENCOURAGING COMM AND NEG.

Chapman, Roger. "The role of lawyers in mediation." New Zealand Law Journal. May 1996: pp. 186-189, 192.
Author contends that lawyers advising clients on mediation should have ability to explain different varieties of mediation available, advantages and disadvantages of each variety, and way procedures of each process may influence final disposition. Author defends position on greater formal recognition of mediation by courts. Inefficiencies and high-costs of

litigation will push people towards ADR. Author provides un-formalized checklists for practitioners when advising clients in mediation.
MED: RELATED PROCESSES-GENERAL/ ROLE OF LAWYERS.

Charlton, Ruth. "New South Wales Legal Convention- 31 October 1995: future directions for mediation." Australian Dispute Resolution Journal. May 1996, 7(2): pp. 118-137.
Author memorializes panel discussions at New South Wales Legal Convention. Topics included: legislative developments in mediation, ADR agreements, eaurly neutral evaluation, cases suitable for mediation, and accreditation for mediators. Text contains question and answers from panel on each subject.
ORGANIZATION POLICIES AND RULES.

Charney, Jonathan I.. "The implications of expanding international dispute settlement systems: the 1982 Convention on the Law of the Sea." American Journal of International Law. January, 1996, 90(1): pp. 69-75.
In 1982, the Convention of the Law of the Sea initiated the trend of creating new international dispute settlement forums in various areas of law like crime and trade at the International Court of Justice. The author addresses the critical comments expressed by Judge Shigeru Oda of the International Court of Justice regarding the dispute settlement system established at the 1982 Convention on the Law of the Sea. The author attempts to argue why he thinks Judge Oda's criticism is misplaced. In particular, the author focuses on the international trend toward increased international dispute settlement.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: MARITIME.

Chodos, Philip and George T. Sulzner. "The Public Service Reform Act of Canada and Federal Labor Relations." Journal of Collective Negotiations in the Public Sector. Spring, 1995, 24: pp. 97-109.
Article describes the Public Service Reform Act of Canada, established in 1993. Author compares the Act to reforms in other English-speaking countries to build an "enterprise culture" in the public sector. Author examines the parts of the Act connected to labor relations in the federal government. Author provides a perspective of the changes in federal labor relations legislation, in the context of reform.
SUBJ MATTER: LABOR-GENERAL/ SUBJ MATTER: INT'L.

Chung, S. Isabella. "Developing a documentary credit dispute resolution system: an ICC perspective." Fordham International Law Journal. April 1996, 19: pp. 1349-78.
Article discusses the International Chamber of Commerce's work on the subject of documentary credit dispute resolution in the banking and financial

services community. Author concludes that the emerging picture is that of a privatized dispute resolution in which parties voluntarily submit their dispute to an expert appointed on the basis of his banking expertise. Such a system, according to the author, may set an important precedent that paves the way for further innovations if effective dispute resolution for a greater span of international commercial activity.
SUBJ MATTER: COMMERCIAL.

Cihon, Patrick J.. "Recent developments in the arbitration of employment discrimination claims". Labor Law Journal; October, 1995; 46: pp. 587-597.
Article discusses the growing trend in the use of arbitration to resolve discrimination claims in the employment context since the Supreme Court's decision in Gilmer v. Interstate/Johnson Lane Corp. Author addresses cases subsequent to Gilmer, legislative endorsement of arbitration, and the increasing resort by society upon arbitration. Author concludes that the Supreme Court will likely revisit its decision in Alexander v. Gardner Denver Co., where it held that individuals bringing Title VII claims were entitled to their day in court.
SUBJ MATTER: LABOR-DISCRIMINATION/ ARB: BINDING ARB-GENERAL.

Clark, D.N.. "Rent review update" (United Kingdom). Solicitors Journal. March, 1995, 139(9): p. 215.
Article summarizes the significant developments in rent review since March 1994. Author addresses issues such as timing, valuation, arbitration, appeals and ground rent.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: RENTAL HOUSING.

Cohn, Avern. "Summary jury trial - A caution." Journal of Dispute Resolution. 1995, Fall. 2: pp. 213-298.
Author draws from personal experience as a district court judge and from other colleagues to caution the use of the summary jury trial. Author believes that summary jury trials are a passing trend with limited utility. Author concludes by stating that federal judges should not have the authority to issue a summary jury trial and should only be used if both parties voluntarily agree.
NON-BINDING RECOMMENDATION PROC- SUMMARY JURY TRIAL.

Colagiovanni, Joseph and Thomas W. Hartmann. "Enforcing arbitration awards". Dispute Resolution Journal; January, 1995; 50(1): pp. 14-17.

Article discusses the steps available to give an arbitration award binding effect under the Federal Arbitration Act or the Uniform Arbitration Act. Subtopics include motions to vacate, modify or correct and waiver of the right to court intervention. Authors conclude that streamlined rules available to enforce awards render arbitration a particularly valuable method of dispute resolution.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB.

Cole, Sarah Rudolph. "Incentives and arbitration: the case against enforcement of executory arbitration agreements between employers and employees." UMKC Law Review. Spring, 1996, 64(3): pp. 449-483.
Article examines the issue of whether judicial enforcement of executory arbitration agreements in instances characterized by parties' disparate negotiating incentives undermines viability of ADR for protecting parties' basic rights. Author argues that distinction between "repeat players" and "one-shot players" demands that courts not enforce executory arbitral agreements when such disparate parties are involved under the current arbitral agreement enforcement scheme. Judicial intervention is called for in situations involving repeat and one-shot players in order to avoid unfair results.
SUBJ MATTER: GENERAL / POWER IMBALANCE.

Coleman, Charles J. and Gerald C.. "Toward a new paradigm of labor arbitration in the federal courts". Hofstra Labor Law Journal; Fall, 1995; 13: pp. 1-74.
Article analyzes the relationship between labor arbitration and the federal judiciary, focusing specifically on the differing interpretations given to labor arbitration by various federal courts and the problems associated with them. Author reviews the "minimalist," "expansionist," and "unbounded minimalist" paradigms of the arbitration/judiciary relationship that have developed through federal caselaw. The authors conclude generally that even though the Gilmer decision is in dire need of clarification, the judicial deference given to arbitration should be maintained.
ARB: JUDICIAL REVIEW.

Coleman, William D.. "The mediation alternative: participating in a problem-solving process". The Alabama Lawyer; March 1995; 56(2): pp. 100-107.
The author discusses the recent developments in alternative dispute resolution in Alabama, specifically mediation. The author highlights the benefits of mediation while comparing it to negotiation. Then the author discusses the mediation process and the role of the mediator. The author concludes by stating that the mediation process is an excellent medium for lawyers to provide their client with maximized opportunity.

MED: RELATED PROCESSES-GENERAL/ MED: ENCOURAGING COMM AND NEG.

Collins, Michael. "Privacy and confidentiality in arbitration proceedings" (Symposium on International Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 121-34.
Article addresses two separate but related questions which follow from the proposition that an arbitration is to be conducted in private. Does the concept of privacy prohibit (1) the consolidation of arbitration proceedings in the absence of agreement? or (2) the use of material prepared for arbitration or disclosed by one party to the other in the course of the arbitration? Author finds that the answers to these questions vary depending on the system of law that governs the arbitration in question. Author proposes the use of the English model as a uniform model for international arbitration with regard to these questions.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Conn, David. "Divorce without lawyers' fear over White Paper." Solicitors Journal. March, 1995, 139(8): p. 179.
Article discusses concerns that the Lord Chancellor's proposals on divorce reform appearing in White Paper will overemphasize the use of divorce mediation. Author interviews Nigel Shepherd, chair of the Solicitors Family Law Association, who suggests that the government will focus on mediation as an alternative to litigation in order to save government money. Shepherd believes that parties may be directed to mediation and prevented from seeking legal advice even when mediation is not the best solution.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Cook, Robert A. and Timothy P. Meredity. "Truth in lending developments in 1994". Business Lawyer; May, 1995; 50(3): pp. 1039-1048.
Article reviews recent case law regarding whether an arbitration clause in a loan document could compel a plaintiff to arbitrate Truth in Lending Act claims. The Eighth Circuit and a California district court have both found that the liberal federal policy favoring arbitration agreements supports the use of such clauses and could bar class certification where the clause is clearly and simply stated in the contract. Author also explores other issues including courier fee classification as a finance charge, credit cards, recission and attorney fees.
SUBJ MATTER: COMMERCIAL/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Cooper Ramo, Roberta. "Lawyers as Peacemakers: our Navajo peers could teach us a thing or two about conflict resolution." ABA Journal. December, 1995, 81: p. 6.
Author uses Navajo Peacemaker Program, a system of alternative dispute resolution based on Navajo tradition, to demonstrate the traits which lawyers should try to emphasize in the American justice system. Author concludes that American legal system has the ability, just like the Navajo system, to make all participants satisfied with the outcome of negotiation and litigation by making the participants feel part of a "community." Author urges lawyers to do their part in fostering this sense of community by trying to promote peaceful, non-combative settlements, as well as zealously representing the client's interest when doing so is necessary to ensure that the community will recognize, or at least acknowledge, the client's interest.
ETHICS: GENERAL.

Corbett, William R.. "Taking the employer's gun and bargaining about returning it: a reply to "a law, economics, and negotiations approach" to striker replacement law." Ohio State Law Journal. November, 1995, 56(5): pp. 1511-36.
Author discusses the Mackay striker-replacement legislative doctrine and efforts by the Clinton Administration to overturn or defeat it by executive order and the courts. Author uses allegory to illustrate problems between employers and unions. Author discusses proposals by Bierman and Gely to limit employers' liability under Mackay to engage in potentially opportunistic behavior against striking or unionized employees and objections to those proposals. Author concludes that Mackay doctrine should be reformed to limit opportunistic employer behavior but not according to the proposals of Bierman and Gely.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: GOV'T.

Cox, Garyles. "The appropriate arena for ADA disputes: arbitration of mediation?" St. John's Journal of Legal Commentary. Summer, 1995, 10(3): pp. 591-596.
Author briefly discusses the benefits and problems of using mediation, rather than arbitration, in resolving disputes arising under the Americans with Disabilities Act. Author notes that certain disputes under the ADA are more suited for mediation and other disputes are more suited for mediation. Author states that a particular ADR system should not be prohibited or mandated, but the choice should be flexible for the parties to choose the optimal system.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Craig, Lawrence W.. "Some trends and developments in the laws and practice of international commercial arbitration" (Symposium on International Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 1-58.
Article provides a background of international commercial arbitration documenting recent developments in arbitration rules and legislation. Article documents, through a survey of several arbitration regimes, that arbitration laws with respect to the procedures to be followed in arbitration and the standards for judicial recourse therefrom. Author concludes that irrespective of the existence of countless international arbitration institutions and a myriad of arrangements for ad hoc arbitrations in different fields, there is such a phenomenon as "international arbitration practice."
SUBJ MATTER: INT'L.

Cronin-Harris, Catherine. "Mainstreaming: systematizing corporate uses of ADR". Albany Law Review; Spring, 1996; 59(3): pp. 847-879.
Article focuses on the methods corporations use to systematize alternative dispute resolution (ADR); a process known as mainstreaming. Author reviews the development of modern commercial ADR and describes the three phases of mainstreaming: (1) the ad hoc stage, characterized by idiosyncratic ADR use; (2) the strategy deployment stage, characterized by establishment of tools to encourage ADR use; and (3) the systems design stage, characterized by refining and integrating existing ADR strategies into the business. Author identifies a clear trend toward corporate institutionalization of ADR and suggests that corporations beginning to use ADR might benefit from an understanding of the three phases of mainstreaming.
SUBJ MATTER: CORPORATE.

Crow, Stephen M. and James Logan. "A Tentative Decision-making Model of the Strong and Weak Forces at Labor Arbitration" Journal of Collective Negotiations in the Public Sector. Spring, 1994, 24: pp. 111-120.
Article discusses strong and weak labor forces that can influence the arbitral decision making process. Author provides a model to describe the interactions of labor forces. Author maintains that the model is an introduction to the relationships of the labor forces, and that many issues remain unresolved.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Crow, Stephen M. and Lillian Y. Fok. "Drug testing at a labor arbitration: friend or foe?". Dispute Resolution Journal; January, 1995; 50(1): pp. 37-42.

Article discusses impact of workplace drug testing on outcomes in labor arbitrations. Based on a review of over 200 arbitration cases involving alcohol and drugs, the authors conclude that drug tests do not impact whether management or the union will prevail in discipline proceedings. The authors contend that drug testing does not provide management with the expected advantage because when drug testing is used, management must provide additional proof related to the testing procedures in order to establish just cause for disciplinary actions.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Daly, Joseph L.. "Conflict resolution and NAFTA." Hamline Law Review. 1995-Spring, 18(3): pp. 337-41.
Article discusses the conflict resolution provisions of the North American Free Trade Agreement by comparing them to the usual conflict resolution mechanisms. Article discusses the sovereignty concerns emodied in multi-national conflict resolution and proposes that NAFTA's arbitrator selection process is an ingenious method of facilitating trust in their decisions. This process involves "reverse selection," a method by which each disputing party picks two arbitrators from the country of the other party and an arbitrator from a non-disputing country is mutually chosen to chair the panel. The author argues that the NAFTA provisions will likely facilitate creative and dynamic interaction and cooperation among member countries.
SUBJ MATTER: INT'L.

Dauber, Cynthia B.. "The ties that do not bind: nonbinding arbitration in federal administrative agencies". The Administrative Law Journal of the American University; Spring, 1995; 9(1): pp. 165-190.
Article discusses nonbinding arbitration in federal administrative agencies as authorized by the Administrative Dispute Resolution ("ADR") Act. Article provides an overview of the ADR Act and it present state of use by federal agencies. Author explores deficiencies in the Act, with emphasis on the effects of procedures, legal precedent, and public policy upon arbitration, under the ADR Act. Article closes with several recommended changes to the ADR Act. SUBJ MATTER: GOV'T/ REQUIREMENTS: STATUTORY OR RULES.

Dauer, Edward A.. "Lawyers as ADR neutrals: conflicts with the practice of law." Colorado Lawyer. May 1996, 25(5): pp. 41-44.
Author provides overview of mediator concerns: duty of loyalty, integrity of process, and market risks concerning future employment as a mediator. Author contends that prior representation as an attorney to a party to mediation does no preclude acting as a mediator. Author reviews other potential conflicts of interest issues such as: representation of an adverse

party to a prior mediation and firm representation of parties to a prior mediation.
ETHICS: GENERAL.

Davidson, Fraser P.. "The Law and Practice Relating to Appeals from Arbitration Awards". Lloyds Maritime and Commercial Law Quarterly; August, 1995; 3: p. 423.
Book review provides a thorough explanation on the topics covered by the book. Author notes that this book is the first to deal with issues arising during the course of an appeal relating to the Arbitration Act of 1979. Book review promotes this book as comprehensive because much legislation referring to arbitration is included, the philosophy behind the Act is interpreted and the interrelated economic principles are discussed.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ REQUIREMENTS: STATUTORY OR RULES/ LEGISLATION.

Davis, Charles M.. "Sky Reefer: foreign arbitration & litigation under COGSA." University of San Francisco Maritime Law Journal. Fall, 1995, 8(1): pp. 73-90.
Article discusses the probable implications of Vimar Seguras Reasaguros, S.A. v. M/V SKY REEFER, placing the case into historical context before presenting an analysis of the 1995 Supreme Court decision. The holding that carrier-dictated foreign arbitration clauses are enforceable is examined for its breadth and problematic consequences. Author notes that the problems with foreign arbitration may be avoided through congressional amendment of COGSA. Author concludes that without amendment, claims for lost or damaged cargo will not be prosecuted unless the amount in question exceeds at least $100,000, thereby resulting in a substantial decline in maritime attorneys' involvement with cargo claim suits.
SUBJ MATTER: MARITIME.

Davis, Kenneth R.. "Protected right or sacred rite: the paradox of federal arbitration policy". DePaul Law Review; Fall, 1995; 45(1): pp. 65-100.
Article explores the implications of Mastrobuono v. Shearson Lehman Hutton, Inc., in which the United States Supreme Court used federal arbitration policy (as codified in the Federal Arbitration Act) to preempt a state common law bar on punitive damages awards by arbitrators, even though the parties had contractually agreed to be governed by state law. Author discusses the history of federal arbitration law, traces the development of state common law bars on arbitral punitive awards and criticizes the Mastrobuono ruling as inconsistent with federal arbitration policy which gives effect to the intent of the parties as expressed in the agreement. Author concludes that the case, although wrongly decided, may protect societal interests by limiting the ability of securities firms to insert

mandatory arbitration clauses and choice-of-law provisions into customers' securities agreements in order to prevent punitive awards.
ARB: BINDING ARB- GENERAL.

Davis, Laura. "Discipline and decisions: a study of arbitration cases dealing with employee discourtesy." Labor Law Journal. February, 1995, 46(2): pp. 78-87.
Article examines 36 cases of employee discourtesy that have been arbitrated; author discusses the discipline that was given to the employee and the effect the discourtesy has on a business, as well as the arbitrator and his decisions in arbitrating discourtesy cases. Author states that management can incorporate into its company policy many elements that will facilitate the discipline being upheld. The arbitrators themselves helped to mold the definition of discourtesy. Author concludes that management should have rules in place that implement progressive discipline of discourteous employees.

Davis, Thomas O.. "Alternative Resolutions Inc." Alberta Law Review. October, 1995, 34(1): pp. 281-83.
Author outlines mediation and arbitration services provided by company in specific areas and discusses flexibility in resolving disputes within organization. Author outlines facilitators' areas of expertise and lists the names of their facilitators.
MED: RELATED PROCESSES-GENERAL/ ARB: MANDATORY, COURT-ANNEXED- GENERAL.

De Meyrick, John. "Whatever happened to Boilermakers?" (part 1) (Australia). Australian Law Journal. February, 1995, 69(2): pp. 106-123.
Article discusses the High Court of Australia and the High Court's avoidance of the "Boilermakers Doctrine." The Boilermakers Doctrine requires a separation of powers between judicial bodies and arbitral bodies; it has proved inconvenient in recent years and the High Court has found creative ways to avoid the Doctrine's mandate while simultaneously preserving the High Court's previous decisions upon which the Doctrine is based. Author examines the Doctrine and the Hogh Court's actions in relation to it.
INST NATURE: JUSTICE SYSTEM- GENERAL/ SUBJ MATTER: PUBLIC POLICY.

Dearden, Richard G.. "Arbitration of expropriation disputes between an investor and the state under the North American Free Trade Agreement." Journal of World Trade. February, 1995, 29(1): pp. 114-127.

Article discusses the arbitration mechanism set out by the Investment Chapter of NAFTA for the settlement of investment disputes. Author outlines the requirements and procedures to be followed in the arbitration process. Author concludes that the NAFTA Investment Chapter provides investors with both a strong investment protection and an arbitration mechanism to resolve disputes between an investor and the State.

Deen, Braswell D., Jr.. "Arbitration improves the justice system." Dispute Resolution Journal. January, 1995, 50(1): pp. 57-59.
Article provides an overview of the standard arbitration process. Author explains the arbitration process in plain English at a layperson's level of complexity. Author expresses the view that arbitration and mediation are necessary and valuable alternatives to the litigation of disputes.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: GENERAL.

Del Rey Guanter, Salvador. "Employee Privacy in Spanish Labor Relations" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 122-38.
Article discusses the expanding application of general constitutional rights to employees in Spain. Author explains how the right of privacy's key concept of self-determination affects attempts to regulate physical appearance, personal relationships between employees and telephone recording. Author concludes that the employer, if using the least restrictive alternative, may limit employee privacy if the employer can show a legitimate business interest upon which the limitation was reasonably based in the particular circumstances. Author discusses employee lifestyle and health, especially alcohol and drug use, AIDS, off-the-job conduct and use of personnel data, and determines that the employee is generally protected provided that no negative affects on the job ensue. Author also discusses protection of employee speech when it relates to the employer's product or service.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS)// COMPARISONS: CROSS-CULTURAL.

Delaume, George R.. "Reflections on the effectiveness of international arbitral awards." Journal of International Arbitration. March, 1995, 12(1): pp.5-19.
The author discusses issues which might arise in the private sector of international arbitration and issues which might arise in international arbitration involving States. The most significant issue effecting States arbitration is the State's attitude toward arbitration and its willingness to comply with the award. In closing, the author considers the benefit of

judicial control in the effectiveness of the award and the use of planning in the initial stages of framing an agreement which includes an arbitration clause.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: INT'L.

Demaret, Paul. "The metamorphosis of the GATT: from the Havana Charter to the World Trade Organization." Columbia Journal of Transnational Law. Winter, 1995, 34(1): pp. 123-171.
Article sets out the contributions of the Uruguay Round of negotiations under the General Agreements on Tariffs and Trade in 1994 to the field of substantive law and places those contributions in historical context. Author shows the evolution of the scope of the GATT over time, and he contends that the Uruguay Round and the creation of the World Trade Organization results in a general liberalization of trade and a loss of sovereignty for all members of the WTO. Author proposes that future developments may hinge on the position of the United States.
COMPARISONS: HISTORICAL.

Denson, Alexander B.. "The summary jury trial: A proposal from the bench." Journal of Dispute Resolution. 1995, Fall, 2: pp. 303-313.
Author reviews the aspects of the summary jury trial from a magistrate judge's perspective. In an easy to read style, author explains the advantages and disadvantages of each major decision within the summary jury trial. Some of the decisions involved include case selection, choosing a judge and conducting a summary jury trial pretrial conference. Article concludes by providing a standard schedule for a one and two day summary jury trial.
NON-BINDING RECOMMENDATION PROC- SUMMARY JURY TRIAL.

"Developing countries and multilateral trade agreements: law and the promise of development". Harvard Law Review; May, 1995; 108(7): pp. 1715-1732.
Article offers theoretical perspective to repeated disappointments that multilateral trade agreements have brought developing countries and questions whether the Uruguay Round Agreement of 1994 will likewise meet with such demise. Author evaluates current skepticism by focusing on traditional dichotomy between utopian and cynical perspectives and how it affects the progression of international law toward a global parallel with domestic legal systems. Article concludes by counseling developing countries to keep the traditional dichotomy in mind when developing strategies for international trade relations.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L.

Devinatz, Victor G.. "Never before have M.D.'s done so much for their patients": the 1975 strike by the Cook County Hospital House Staff Association against Cook County Hospital. Journal of Collective Negotiations in the Public Sector. Spring, 1996, 25(2): pp. 117-136.
Article recounts the apparent effectiveness of medical residents and interns striking over patient-care issues in addition to wage and employment concerns. The history of housestaff organizing is discussed and a detailed overview of the 1975 House Staff Association strike against Cook County Hospital in Chicago is presented. Author concludes that prominent inclusion of patient-care issues in the union's demands and coalition-building in and outside the workplace is critical to achieving successful strike results, thereby potentially enabling public sector housestaff unions to act as agents of social change.
SUBJ MATTER: HOSPITALS.

Devinatz, Victor G. and Wayne Kennedy. "AFGE Local 2816 and the "community unionism": a new conception of public sector unionism". Journal of Collective Negotiations in the Public Sector; Spring, 1995 24(2): pp. 121-132.
Article discusses the conception of public sector unionism as introduced by Wayne Kennedy, termed "community unionism." The concept is based upon the idea of including both public sector employees and public aid recipients in the same collective bargaining unit. Article examines the courts' treatment of Kennedy's ideas and analyzes the significance of the contributions.
SUBJ MATTER: GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: GOV'T.

Dichter, Arthur J.. "Tax treaty developments". The Tax Adviser; March, 1996; 27(3): pp. 144-48.
Article discusses United States tax treaty developments of 1995, including: treaties and protocols that became effective during 1995; treaties and protocols ratified during 1995; treaties approved by the Senate in 1995, but not yet in force; treaties and protocols signed but not yet considered by the Senate; agreements initialed in 1995, but not yet signed; and agreements terminated or notice of termination during 1995. Author gives specific descriptions of tax treaty developments between the United States and Canada, France, Portugal, Sweden and Israel.
SUBJ MATTER: TAX/ SUBJ MATTER: INT'L.

Dillon, Thomas J. Jr.. "The World Trade Organization: a new legal order for world trade?" Michigan Journal of International Law. Winter, 1995, 16(2): pp. 349-402.

Article is based on a lecture given by the author which details the most dramatic modifications within the framework of the multilateral trading system designed to support the projected trade expansion, namely, the new organization structure under the World Trade Organization and the new dispute settlement procedures. Article evaluates changes in the trade regime against the new dispute settlement procedures. Article evaluates changes in the trade regime against the backdrop of the Bretton Woods System and highlights the debate whether the nature of the trade regulating body ought to be adjudicatory or negotiatory. Author offers conclusions, perspectives, and comments regarding the future development of the world trading system.
SUBJ MATTER: INT'L.

Dilworth, Donald C.. "Court decisions undermine forced arbitration." Trial. March, 1995, 31(3): pp. 21-26.
Article reviews two recent court decisions addressing the issue of the rights of parties who sign agreements containing binding arbitration clauses. Author summarizes two decisions of the U.S. Court of Appeals for the Ninth Circuit. Author concludes that the effect of these decisions is to lessen the enforceability of binding arbitration in employment agreements.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Di Marzo, Luigi. "Dispute resolution provisions of the Agreement on Internal Trade". Alberta Law Review. October, 1995, 34(1): pp. 240-266.
Article reviews the dispute resolution provisions of the Agreement on Internal Trade (the Agreement), a multilateral trade agreement between the federal and provincial governments of Canada designed to remove barriers to the free movement of persons, goods, and services within Canada. The article begins by describing the main characteristics of the Agreement's dispute resolution process. Next, the article describes how the process operates when applied to different entities. The article concludes by offering suggestions to improve and streamline the process.
INST NATURE: GOV'T ENTITIES/ SUBJ MATTER: GOV'T/ LEGISLATION.

Dix, Martin R.; Richard P. Lee and Alicia M. Santana. "Land use and environmental dispute resolution: the special master." Florida Bar Journal. November, 1995, 69(10): pp. 63-68.
Article explains the background to the passage of the Florida Dispute Resolution Act and summarizes the procedures mandated by the Act. Authors examine several criticisms of the Act and conclude that the Act fails to satisfy dispute resolution goals of informality and efficiency.

NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: ENVIRONMENT/ REQUIREMENTS: STATUTORY OR RULES.

Donmoyer, Ryan J.. "Mediation plan begins with cautious optimism." Tax Notes. October 23, 1995, 69(4): pp. 416-18.
Author discusses new program by Internal Revenue Service to mediate disputes prior to litigation. Author outlines motivations of IRS for limiting scope of cases set for mediation. Author details IRS mediation test involving dispute with Dupont. Author concludes mediation process through IRS will be successful.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: TAX.

Donmoyer, Ryan J. and Constance Spheeris. "Compromise, mediation programs get high marks." Tax Notes. May 20, 1996, 71(8): pp. 997-998.
Article briefly discusses the alternative dispute resolution techniques used by the Internal Revenue Service (IRS) as an alternative to traditional litigation. The article briefly notes the Court Procedure Committee meeting where commentators praised the IRS for its efforts to offer mediation as an alternative to litigation.
SUBJ MATTER: TAX.

Donmoyer, Ryan J., John Turro, and Nancy Loube. "Multinationals and IRS must work together, TEI conference told" (Tax Executives Institute). Tax Notes. March, 1995, 66: pp. 1906-08.
Article addresses how the IRS and multinational corporations can work together to determine the correct tax liability of worldwide business enterprises. Author interviews Chief Counsel Stuart L. Brown, who suggests that the advance pricing agreement [APA] program is one way that the IRS and multinationals can work together. Before these groups can work together effectively, Brown believes that an understanding of mutual expectations must be established.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: INT'L/ SUBJ MATTER: TAX.

Donmoyer, Ryan J., John Turro, and Kathleen Matthews. "IRS to seek more third-party comps in transfer pricing cases." Tax Notes. March, 1995, 66(9): pp. 1605-06.
Article discusses the IRS' plan to pursue more third-party comparables to evaluate transfer pricing practices. Author reports on information announced by IRS Commissioner Margaret Richardson at a meeting of the U.S. branch of the International Fiscal Association in Washington, D.C. Richardson communicated that when investigating transfer pricing cases,

relying on public sources and voluntary sharing of data is inadequate, and the IRS plans to acquire information through its summons authority.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: TAX.

Donovan, David Francis. "International commercial arbitration and public policy." New York University Journal of International Law and Politics. Spring, 1995, 27(3): pp. 645-657.
Article was delivered as a speech at a symposium on the structural and procedural issues in the formation and execution of private and public international law. Author addresses how norms of public and private international law are formed and executed in the setting of international commercial arbitration. Author addresses the legal structure of international commercial arbitration, recent developments in Latin America, the doctrine of lex mercatoria in the realm of private law, and the need for arbitral tribunes to enforce public law norms.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: COMMERCIAL.

Durbach, Andrea. "Test case mediation - privatising the public interest." Australian Dispute Resolution Journal. November, 1995, 6(4): pp. 233-42.
Author argues proposition that mediated settlements serve to undermine and privatize the significant public interest gains of litigation and offers caution against shift from litigation to mediation. Author supports argument by outlining access to justice as an effective right of the people. Author discusses sex discrimination case, the judicial and mediated remedies reached by the parties involved and the dissatisfaction of some of those affected after mediated settlement. Author concludes that while mediation is valuable mechanism for facilitating access to justice, its value in the context of public interest litigation is diluted if important public interests are privatized with a consequent reduction in access and equity.
SETTLEMENT: PRESSURES TO SETTLE/ SUBJ MATTER: PUBLIC POLICY.

Dzienkowski, John S.. "Legal malpractice and the multistate law firm: supervision of multistate offices; firms as limited liability partnerships; and predispute agreements to arbitrate client malpractice claims." (Symposium: Ethics and the Multijurisdictional Practice of Law). South Texas Law Review. November, 1995, 36(3): pp. 967-97.
Article explores three issues concerning the multistate practice of law: the supervision of lawyers by partners in multistate firms; firms' use of limited liability partnerships created by state statutes; and law firms' efforts to impose on client contracts mandatory arbitration provisions. Author explains that increased exposure to liability has led large law firms to focus

on avoiding conflicts of interest in branch offices; that the federal government, along with some state governments, has advanced efforts to minimize liability exposure of firms; and that predispute arbitration agreements in attorney-client contracts raise a number of serious legal issues. Author contends that firms need to create more systematic procedures for training and supervising lawyers; that it is not yet clear whether a majority of states will enact legislation that permits partners to limit their vicarious liability; and that the use of mandatory arbitration provisions must balance the benefits of alternative dispute resolution with public policies that control the quality of legal services.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: OTHER PROF MALPRACTICE/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Easterbrook, Joanne. "Resolving health care disputes." Solicitors Journal. April 26, 1996, 140: pp. 410-411.
Article addresses the use of ADR in the health care industry in England. Author discusses increasing use of mediation in this area, and explores the pros and cons of the use of mediation in health care disputes. Article concludes that mandatory mediation has become increasingly prevalent in England and that even voluntary mediation is an effective mechanism for achieving more satisfactory outcomes.
SUBJ MATTER: HOSPITALS

Edgar, R. Allan. "A judge's view - ADR and the federal courts - the Eastern District of Tennessee" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 995-1005.
Article briefly discusses the need for ADR in federal courts. Author notes that mediation has emerged as the primary method of ADR in the Eastern District of Tennessee. Article discusses the role of the judge and mediators in mediation. An appendix to the article includes the text of the local rule authorizing mediation.
MED: RELATED PROCESSES-GENERAL.

Eekelaar, Joahn. "The Family Law Bill." Family Law. January, 1996, 26,: pp. 45-48.
The article looks at some of the controversial aspects of the proposed family law bill under consideration by the British House of Lords in Parliament. In particular, the author looks at the divorce provisons in the bill which provide for a new process for making divorce or separation orders. The author also discusses the mediation provisions in the bill as well as the domestic violence provisions. In his discussions, the author also notes pros and cons for the provisions.

SUBJ MATTER: FAMILY (DOMESTIC REL).

Efron, David J.. "Muddied Waters: Awards of Punitive Damages in Disputes Arbitrated Pursuant to Brokerage Firm Customer Agreements." DePaul Business Law Journal. Spring-Summer, 1995, 7: pp. 333-350.
Article examines conflicting case decision as to whether arbitrators may award damages pursuant to Customer Agreements. Author examines differing cases addressing the Federal Arbitration Act and the decision in Mastrobuono v. Shearson Lehman Hutton, Inc. which upheld the authority of arbitrators to award punitive damages. Author argues that Due Process may be violated because of the vast discretion that arbitrators have in their decision making.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: CONSUMER.

Eike, Betsy. "Tax Benefits of Relocation Costs." The Tax Adviser. February 1, 1995, 26(2): pp.78-80.
Article describes tax implications of a business relocation. Author reviews applicable caselaw, statutes and regulations. Author distinguishes and explains deductibility of various expenses related to the relocation or exploration of the possibility of a relocation of a business.
SUBJ MATTER: TAX.

Elliot, David C.. "MED/ARB: fraught with danger or ripe with opportunity?". Alberta Law Review; October, 1995; 34(1): pp. 163-179.
Article examines the melding of mediation and arbitration into a combined MED/ARB dispute resolution process where one person is appointed to mediate, and if necessary, arbitrate the parties' dispute. After discussing the attractions of MED/ARB, the article examines the concerns of those who oppose the combination of mediation and arbitration roles into one person. The remainder of the article examines legislative and institutional treatment of MED/ARB and how these two very different approaches to conflict resolution can, with careful management, be successfully combined.
MED: RELATED PROCESSES-GENERAL/ ARB: BINDING ARB-GENERAL.

Emerson, Robert B, James P. Holloway, and Linda Donnelly. "1995 Annual Report of the Colorado Supreme Court Grievance Committee." Colorado Lawyer. April 1996, 25: p. 1-6.
Article gives an overview of the lawyer disciplinary process in Colorado. Contains tables on yearly totals of inquiry panels, investigations, complaints filed, hearings held, and Supreme Court action. Author concludes the 1995 efforts resulted in lawyer disciplinary process that meets the highest professional standards.

NON-BINDING RECOMMENDATION PROC- GENERAL.

Engvall, Robert P.. "Public-Sector Unionization in 1995 or it Appears the Lion King Has Eaten Robin Hood." Journal of Collective Negotiations in the Public Sector. Summer, 1995, 24: pp. 255-269.
Article examines the hostile environment of the labor movement. Author describes the decrease in the size and strength of unions, especially in the areas of the economy where alternative personnel management strategies address worker interests. Author argues that unions have become more vulnerable because of the increasing dominance of a market society and a conservative social policy. Author examines the decline of unions in this context.
SUBJ MATTER: LABOR-GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Estes, Harper. "Enforcement of settlement agreements made at mediation" Texas Bar Journal. April, 1995, 58(4): pp. 335-337.
Author analyzes the dangers of engaging in settlement agreements made during mediation proceedings. He analyzes the main arguments, the language of the Alternative Dispute Resolution Statue, the leading case, "In Re Marriage of Ames," policy arguments and analogy to interpretation of similar conflicts in other jurisdictins. Author makes interim suggestions, concluding that the enforceability of such mediation agreements will be decided in the upcoming appellate decisions.
MED: PUBLIC POLICY DIALOGUE.

Ettingoff, Cindy, Cole and Gregory Powell. "Use of alternative dispute resolution in employment-related disputes" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 1131-1167.
Article examines use of binding arbitration and mediation in employment-related disputes, focusing on claims arising under Title VII, ADEA and ADA. Author discusses the many benefits of employing ADR procedures in employment disputes, including the large volume of pending claims, high cost of litigation, speed of resolution and several others. Author also provides guidance to employers concerning what form of ADR is appropriate under certain claims. Author provides a checklist for practitioners to consult when considering ADR in employment-related claims.
MED: RELATED PROCESSES-GENERAL/ ARB: BINDING ARB-GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Evans, Richard "Indisputable evidence': autumn offensive a watershed for mediation (Victorian Supreme Court's drive to refer cases to mediation)" Law Institute Journal, July, 1995; 69(7): pp. 636-637.
Article compares Autumn Offensive to the Spring Offensive phase of the Victorian Supreme Court's mediation program. Article addresses the following issues regarding mediation: role of lawyers and their performance during these phases; level of client education and empowerment through the process; client satisfaction and cost. Article concludes by commenting that the Autumn Offensive has increased the momentum of the mediation movement and predicts that the next step is either a statement from the Court that it is publicly committed to mediation or the requirement of mandatory mediation in certain circumstances.
MED: RELATED PROCESSES-GENERAL/ MED: ENCOURAGING COMM AND NEG/ SUBJ MATTER: INT'L

Fahlbeck, Reinhold. "Employee Privacy in Sweden" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 139-74.
Article reviews the relative lack of constitutional protection of employee privacy in Sweden and discusses substantive areas in which statutes define the scope of employee rights. Author analyzes employer regulation of on- and off-the-job worker conduct, collection and use of personnel data, investigation and surveillance of employees, and job testing. Author notes differences in protection of the public and private sectors. Author explains that employees receive protection through a general requirement of "good labor market practice", extensive union participation and a dismissal-for-just-cause-only standard. Author concludes that, although use of medical, personality, and aptitude tests is increasing, statutory schemes are replacing historical de facto privacy and bringing greater privacy rights to employees in Sweden.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Fahrenback, C. Christine. "Vimar Segorus y Reaseguros v. M/V Sky Reefer: A change in course: COGSA does not invalidate foreign arbitration clauses in maritime". Akron Law Review; Winter, 1996; 29(2); pp. 371-395.
Article examines Supreme Court decision that altered its interpretation of the Carriage of Goods Shipping Act by upholding a foreign arbitration clause. Article discusses statutory history of the FAA and Congressional intent to uphold international arbitration provisions. Author concludes that

the Court's decision will further propel the use of arbitration in resolving international commercial disputes.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L.

Fanto, James A.. "Jurisprudence: Justice Blackmun and securities arbitration: McMahon revisited." North Dakota Law Review. Winter, 1995, 71(1): pp. 145-72.
Article is a tribute to Justice Blackmun, written by a past clerk of the Justice. Article expounds on Blackmun's jurisprudence in security law cases emphasizing his dissent in Shearson v. McMahon and Blackmun's views with regard to securities arbitration. Author concludes that the Court has a lack of enthusiasm for corporate, securities, and financial law cases due to the Supreme Court justices' lack of experience in this field. However, although Blackmun is recognized for his expertise in socially sensitive issues, he has contributed much to the unfamiliar area of law.
SUBJ MATTER: SECURITIES.

Farber, Henry E. and Carol Scott. "Negotiating the labor law mine field: selected topics." Whittier Law Review. Winter, 1995, 16(4): pp. 1051-1068.
Article was delivered as a speech at the Fourteenth Annual Health Law Symposium and addresses overlaps of employment issues in the health-care industry. Authors address the impact of the Americans with Disabilities Act on medical staff credentialing in integrated delivery systems, as well as how the ADA and the Family and Medical Leave Act of 1993 integrate with the Workers' Compensation Act. Authors also discuss violence in medical centers and labor law issues relating to mergers, acquisitions and sales of health-care facilities.
SUBJ MATTER: LABOR-GENERAL.

Faure, David. "The Federal Advisory Committee Act: balanced representation and open meetings in conflict with dispute resolution." Ohio State Journal on Dispute Resolution. Spring, 1996, 11(2): pp. 481-519.
Note discusses the impact of the Federal Advisory Committee Act on negotiated rulemaking and consensus-building by advisory committees concerned with proposed rules and regulations. Author suggests that FACA's open meetings and balanced viewpoint provisions arguably inhibit consensus-building. Proposed solution is to adopt interpretation of FACA permitting closed meetings through the use of private committee subgroups prior to open committee meetings. Author points to both case law and agency definitions allowing this recommended course of action.
SUBJ MATTER: GOV'T/ ORGANIZATION POLICIES AND RULES.

Feerick, John and Carol Izumi, Kimberlee K. Kovack, Lela Love; Robert Moberly, Leonard Riskin and Edward F. Sherman. "Standards of professional conduct in alternative dispute resolution". Journal of Dispute Resolution; Spring, 1995; 1: pp. 95–128.
Article includes a transcript of a panel discussion relating to an inter-disciplinary code of conduct that addresses the professional duties and obligations of ADR neutrals. The panel discussion covers, among other topics, the role of the mediator as a facilitator vs. providing neutral assessment. Article includes a proposed standard of conduct for mediators.
MED: RELATED PROCESSES-GENERAL/ ETHICS: GENERAL.

Feinberg, Kenneth R.. "Billing reform initiatives". (includes discussion) (Symposium on Business Dispute Resolution: ADR and Beyond). Albany Law Review; SPRING, 1996; 59(3): pp. 963-69.
Author notes the paucity of in-house ADR use by corporations and expresses skepticism that ADR can be practiced in large firms driven by litigation. Author discusses how ADR has led to the use of innovative billing methods such as flat retainers, sliding scale billing and success fees. Author concludes with a brief panel discussion on conflicts of interest and the proper way to resolve disputes on their merits.
ECONOMIC ADVANTAGES OF ADR/ ETHICS: GENERAL.

Feinberg, Kenneth R.. "Creative use of ADR: the court-appointed special settlement master". Albany Law Review; Spring, 1996; 59(3): pp. 881-893.
Article discusses the role of court-appointed Special Settlement Masters in conducting settlement negotiations in complex litigation. Author identifies the types of disputes amenable to the use of Special Settlement Masters, discusses devices and techniques used by Special Settlement Masters and addresses ethical questions raised by the use of Special Settlement Masters. Author supports the use of Special Masters as an innovative case management technique but cautions that their expanding role should be carefully scrutinized and monitored.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SETTLEMENT: PRESSURES TO SETTLE/ ETHICS: GENERAL.

Feinberg, Kenneth R.. "Response to Deborah Hensler, 'A glass half full, a glass half empty: the use of alternative dispute resolution in mass personal injury litigation.'" Texas Law Review. June, 1995, 73(7): pp. 1647-1651.
Article discusses the creative use of ADR and special masters (a.k.a. creative judicial management) in mass tort cases. Author delineates reasons for the necessity of development and implementation of creative judicial management, noting that the judiciary is the only branch of the government

that is willing or able to realistically respond to the flood of claims involved in mass tort litigation. Author advocates aggregation and consolidation of cases, discussing the possibilities and ramifications of (1) Fed. R. Civ. Pro 23: class action; (2) Bankruptcy; and (3) State class actions designed to have national persuasive effect. Author notes ideological and practical drawbacks to mass resolution (as opposed to individual case by case resolution), but concludes that the interests of justice and fairness not only are best served by but also require use and implementation of creative alternatives, like creative judicial management.
SUBJ MATTER: OTHER TORTS/ COURT REFORM.

Felsenthal, Steven. "Superfund reauthorization: program, funding, dispute resolution, local control and tax incentives." Fordham Environmental Law Journal. SPRING, 1996 7: pp. 515-542.
Note discusses several of the numerous tax issues involved with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) reauthorization. Author explains the current structure of CERCLA, addresses some of the primary difficulties with the current statutory scheme, and describes a solution involving new taxes proposed by the Clinton administration. Author concludes by offering his own solution for reforming financing for the cleanup of hazardous waste sites by extending the current CERCLA taxes without imposing new taxes and encouraging the use of alternative dispute resolution mechanisms.
SUBJ MATTER: ENVIRONMENT/ SUBJ MATTER: TAX.

Filiault, R. James. "Enforcing mandatory arbitration clauses in employment contracts: A common sense approach to the Federal Arbitration Act's Section 1 exclusion." Santa Clara Law Review. 1996, Mid-Winter, 36: pp. 559-594.
Author analyzes the section 1 exception of the FAA. The section exempts, "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The author reviews the history and intent of the exception, as well as court analysis on the issue, and concludes that the section should be read narrowly to allow an exception for those only in the transportation industry.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Filner, Barbara and Michael Jenkins. "Performance-based evaluation of mediators: the San Diego Mediation Center's experience." (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 647-63.
Commentary provides a discussion of the issue of whether mediators can be credentialed based on demonstrated performance. Author explores a proposed set of mediator core characteristics, how specified observable

behaviors relate to these characteristics, and the San Diego Mediation Center's experience in establishing and administering this program. It concludes that their credentialing process has provided an important step for mediators to regulate their own industry, both protecting the consumers and the practitioners.
MED: RELATED PROCESSES-GENERAL.

Finch, James S. and Harold P. Fiske. "Vietnam's evolving arbitration system". East Asian Executive Reports; April 15, 1995; 17(4): pp. 9-12.
Article examines processes for resolution of disputes between foreign entities and Vietnamese parties, including the Vietnam International Arbitration Center. Authors note that the primary difficulty with the system is that there is no formal legal mechanism to enforce arbitration awards, and parties that have been unable to force courts or government officials to confirm or enforce arbutration awards have occasionally instituted new court proceedings with respect to the same dispute. Authors note that despite the lower cost compared to other dispute resolution forums, the instability of Vietnam's new arbitration system may outweigh potential benefits.
SUBJ MATTER: INT'L.

Fiore, Nicholas. "Pros and cons of new IRS mediation program." Journal of Accountancy. May 1996, 181(5): pp. 36.
Author discusses the choice of mediator when mediating with the IRS. Author suggests choosing an outside mediator instead of an IRS mediator because of neutrality issues and the IRS mediator's duty to disclose violations of the tax code to the IRS. Author highlights conflict of interest issues involving mediation and mediator selection.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: TAX.

Fischer, Robert Donald and Roger S. Haydock. "International commercial disputes: drafting an enforceable arbitration agreement". William Mitchell Law Review; Spring, 1996; 21(3): pp. 941-987.
Article discusses the strengths and weaknesses to be considered when choosing arbitration of international commercial disputes. Authors attempt to guide lawyers and businesses involved in overseas transactions in drafting an effective arbitration clause. Authors provide examples of arbitration clauses and checklist of considerations.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: INT'L/ SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD.

Fisher, Mortn P., Jr.. "Negotiating subordination, non-disturbance, and attornment agreements." The Practical Real Estate Lawyer. January, 1995, 11(1): pp. 7, 41-48.
Article discusses the multi-party agreement between a landlord, tenant and the landlord's lender that defines the relationship among the parties in the event of default by the landlord and foreclosure or other takeover by the lender. Author discusses variations in state default rules and contract provisions likely to be sought by each party. He urges that agreements be worked out at the time that the landlord and tenant enter into the lease and the loan is made in order to avoid prolonged negotiations or litigation in the event of default.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: COMMERCIAL.

Folberg, Jay. "Introduction." (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 609-11.
The author, Dean of the University of San Francisco Law School, introduces the Symposium on certification of mediators and gives a brief overview of the importance of the topic and of the specific articles to follow. Author communicates that there is a continuing debate on how certification can best be achieved. There appears to be a consensus by these scholars that certification is preferable to licensure of mediators and that certification by legislation should be inclusive in terms of who may qualify to become certified and that it should be based on training, performance and experience.
MED: RELATED PROCESSES-GENERAL.

Foster, Nancy J. and Joan B. Kelly. "Divorce mediation: who should be certified?" (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 665-75.
Commentary discusses the debate over whether mediators of divorce should be required to have a law degree or professional license. The authors assert that in the mediation community there is a sentiment that no legal degree is necessary and that while in the legal community many feel that a law degree is necessary, there is no real consensus among lawyers. The authors also suggest that instead of such requirements there should be training in family law issues so that mediation can grow and expand with contributions from all fields and people of all backgrounds.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Frankhauser, Mahlon M.. "Arbitration: the alternative to securities and employment litigation". Business Lawyer; August, 1995; 50(4): pp. 1333-1369.
Article provides a guideline for enforcing arbitration agreements and focuses on the various claims that are arbitrable. The availability of a customer challenge to the validity of arbitration agreements is discussed and an explanation of which forum is proper to resolve these challenges is given. Because the remedy under self-regulatory organizations is not specified, the author describes the various types of arbitration awards available under these securities arbitration agreements.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: SECURITIES.

Friedland, Paul D.. "The Swiss Supreme Court sets aside an ICC award". Journal of International Arbitration; March, 1996; 13(1): pp. 111-16.
Article discusses the Maran/Vekoma case, in which the Swiss Supreme Court found that an International Chamber of Commerce (ICC) tribunal misapplied a contractual provision that required that any arbitration be commenced "within thirty days after it was agreed that the difference or dispute cannot be resolved by negotiation" and on that basis the Court set aside the ICC award due to lack of arbitral jurisdiction. Author argues that the Maran/Vekoma case shows how far the Swiss Supreme Court is ready to go in substituting its judgment for that of the arbitrators with respect to the factual and contractual issues underlying jurisdictional rulings. Author concludes that the case is a warning to parties entering agreements providing for international arbitration in Switzerland that the Swiss Supreme Court is willing to exercise its power respecting arbitral jurisdiction in a manner that may trespass upon the power that the arbitrating parties reasonably believed was entrusted to the arbitrators.
ARB: JUDICIAL REVIEW/ SUBJ MATTER: INT'L.

Fuller, Natalie. "Outcomes of family mediation - rates and types of agreements." Australian Dispute Resolution Journal. November, 1995, 6(4): pp. 262-73.
Article documents findings, based on mediators' perceptions of outcome, regarding the use of mediation by a family mediation service in the dissolution of couples' relationships. Author explains the methodology of the study and identifies the rates and types of agreement reached. Author concludes that couples who have been separated between three months and one year are more likely to reach agreement; they are more likely to agree on issues relating to children than on those relating to property.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Gangel-Jacob, Phyllis. "Some words of caution about divorce mediation." Hofstra Law Review. 1995-Summer. 23(4): pp.825-36.
Article attempts to describe many areas in divorce cases that are not addressed or resolved by mediation. The author notes that matrimonial actions are more often than not complex matters that do not lend themselves to resolution by a forum which does not provide the checks and balances of the judicial system. Furthermore, the author states that full and fair financial disclosure between parties is all but forgotten in mediation and that it does not provide the necessary safeguards to deal with domestic abuse issues.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Garro, Alejandro M.. "The contribution of the UNIDROIT Principles to the advancement of international commercial arbitration". Tulane Journal of International and Comparative Law; Spring, 1995; 3 (1-2): pp. 92-128.
Article discusses the role of UNIDROIT principles for international commercial contracts in the context of international commercial artibtrations. The principles are a set of rules specifically designed for application to international commercial contracts. Article discusses the manner in which the principles may increase the efficiency of international arbitration. Author concludes that the principles may add fairness and certainty to the international arbitral process.
SUBJ MATTER: INT'L/ SUBJ MATTER: COMMERCIAL.

Garvey, Jack I.. "Trade law and quality of life - dispute resolution under the NAFTA side accords on labor and the environment." American Journal of International Law. April, 1995, 29(2): pp. 173-78.
Article discusses the effectiveness of the Side Agreements dispute resolution process in NAFTA. Author examines the factors that will enable the Side Agreements to balance the interests of trade and investment without sacrificing the quality of life of its participants. He concludes by suggesting that the NAFTA Side Agreements become a model for international trade dispute resolution.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: INT'L.

Gauffreau, Stuart C.. "Foreign arbitration clauses in maritime bills of lading: the Supreme Court's decision". North Carolina Journal of International Law and Commercial Regulation; Winter, 1996; 21(2) pp. 395-420.
Examines the U.S. Supreme Court's decision to uphold a foreign arbitration clause under the Carriage of Goods Shipping Act. Author examines precedential cases considered by the Court in arriving at its determination in

the Sky Reefer case. Author concludes the case was wrongly decided and a better resolution would require the weaker party to receive actual notice of an international commercial arbitration provision before it can be enforced against them.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L/ COMPARISONS: HISTORICAL.

Gay, Edward J. "Hang Up the Gloves! Arbitration Program: Another Option to Legal Fee Disputes." Louisiana Bar Journal. April, 1995, 42(6): pp. 530-534.
Author discusses the problem of legal fees as the main conflict in the relationship between the bar and the public. The public has an interest in reduced legal fees, while attorneys' interest lies on the other end of the spectrum. Author reviews the current state of affairs and criticizes the billing practices. He discusses the Louisiana Bar Association Dispute Resolution Program, as an alternative to litigation over legal fees. While the major obstacle to such agreements is the unwillingness of certain attorneys to participate in the process, author concludes that conscientious and thoughtful attorneys will welcome and use this resource.
SUBJ MATTER: COMMUNITY.

Gebhart, Paul F.. "Employee privacy rights in the United States". Comparative Labor Law Journal; Fall, 1995; 17: pp. 175-205.
Article analyzes the privacy rights of employees in both the public and private sectors. Author discusses the types of restrictions that employers can and cannot legally place on employees, ranging from the permitted prohibitions on drug abuse, smoking and sexual harassment, to the generally unlawful restrictions on dating or marriage between co-workers and off-the-job behavior that has no direct effect on the employer's business. The author concludes that employees should not always have a legitimate expectation of privacy, depending upon whether or not the employee was put on notice regarding an employer's established and business-related policy for limiting employee privacy.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Gerencser, Alison E.. "Family mediation: screening for domestic abuse." Florida State University Law Review. 1995-Summer, 23(1): pp. 43-69.
Article highlights the dangers of courts sending cases to mediation despite domestic violence and abuse. Article provides an overview of the family mediation process and argues that participants should be required to receive training about domestic violence to better detect such instances, and that participants themselves be screened for domestic abuse. The author further proposes that legislatures require screening by participants (such as lawyers,

clerks of the court, or a judge) at every level, and mandate an exemption from mediation when participants find domestic abuse.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Getlan, Myles. "TRIPS and the future of section 301: a comparative study in trade dispute resolution." Columbia Journal of Transnational Law. Winter, 1995, 34(1): pp. 173-218.
Article discusses the implications for international intellectual property rights under section 301 of the Trade Act of 1974, under which the United States has addressed its concern for the lack of international protection of intellectual property rights since 1984. Author proposes that the Agreement on Trade Related Aspects of International Property Rights (TRIPs), produced in the Uruguay Round of negotiations under the General Agreements on Tariffs and Trade, provides the most effective means of protecting international property rights abroad because of the improved dispute-resolution process.
SUBJ MATTER: INT'L

Gibbens, Kimberly, Cathleen A. Martin, Peter Summers and Stephen Witte. "Recent developments: the Uniform Arbitration Act." Journal of Dispute Resolution. 1995, Fall, 2: pp. 383-435.
Annual student project examines court opinions from the past year interpreting the Uniform Arbitration Act (U.A.A.). To date, thirty-four states and the District of Columbia have adopted arbitration statutes based on the U.A.A.. Authors subdivide the major cases of the past year into the relevant U.A.A. sections, providing the decision and rationale of each case. The goal of the annual project is to encourage uniformity in the interpretation of the U.A.A..
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Gilbert, Kimberly D. "Conflicts of law -- validating foreign arbitration clause in maritime bills of lading." Suffolk University Law Review. Spring, 1995, 29(1): pp. 265-275.
Article addresses the Supreme Court's recent 7-1 affirmance of a First Circuit decision that the Carriage of Goods by Sea Act (COGSA) does not invalidate foreign arbitration clauses in bills of lading. Author contends that the Court's holding contravenes the meaning of COGSA and disrupts the harmony of international commerical negotiations. Author argues that the Court ignored COGSA's goal of ameliorating inequalities lurking in contract negotiations between commercial parties.
TYPE OF SOURCE: CASE STUDY/RESEARCH REPORT.

Gilbert, Kimberly D. "Conflicts of law -- validating foreign arbitration clause in maritime bills of lading." Suffolk University Law Review. Spring, 1995, 29(1): pp. 265-275.
Article addresses the Supreme Court's recent 7-1 affirmance of a First Circuit decision that the Carriage of Goods by Sea Act (COGSA) does not invalidate foreign arbitration clauses in bills of lading. Author contends that the Court's holding contravenes the meaning of COGSA and disrupts the harmony of international commerical negotiations. Author argues that the Court ignored COGSA's goal of ameliorating inequalities lurking in contract negotiations between commercial parties.
TYPE OF SOURCE: CASE STUDY/RESEARCH REPORT.

Gilman, Ronald Lee.. "Resolving commercial cases through alternative dispute resolution" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 1121-1130.
Article discusses the use of ADR in commercial disputes. Article examines the factors favoring as well as preventing settlement through ADR in such cases. Author notes that in Gau Shan Co. v. Bankers Trust Co., a combination of arbitration and mediation allowed for settlement where none would have occurred in its absence. Author states that although not every case will be expedited by the use of ADR, such procedures should be utilized whenever possible.
MED: RELATED PROCESSES-GENERAL/ NON-BINDING RECOMMENDATION PROC- GENERAL/ SUBJ MATTER: COMMERCIAL.

Ginnane, John. "Farm debt mediation - a banker's observations. Australian Dispute Resolution Journal. November, 1995, 6(4): pp. 257-61.
Article examines the reasons for and the operation of the New South Wales Farm Debt Mediation Act of 1994. Author analyzes the Act, which gives farmers the right to negotiate with their creditors before the creditors can enforce farm mortgages, from the perspective of banks and farmers. Author contends that farm debt mediation will make mediation more familiar and will help establish Australia as the leading mediation nation.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FARM.

Giovagnoli, Michele L.. "To be or not to be? Recent resistance to mandatory arbitration agreements in the employment arena." UMKC Law Review. Spring, 1996, 64(3): pp. 547-585.
Comment explores the use of private mandatory arbitration agreements between employers and employees which preclude bringing discrimination claims in a judicial forum. Author discusses the use of ADR in

employment disputes before and after Gilmer v. Interstate/Johnson Lane Corp. and briefly comments on related issues: congressional concerns; resistance to such mandatory agreements; issues to consider in drafting separate arbitration agreements from employment agreements; and the strengths and weaknesses of arbitration agreements. Conclusion reached is that while imperfect, the use of employer-employee mandatory arbitration agreements will continue to be favored due to the potential advantages to be realized, thereby necessitating that consideration be given to the fairness of the procedures and processes employed.
SUBJ MATTER: LABOR-DISCRIMINATION/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Glenn, Heidi. "Congressional leaders talk up bipartisan budget deal." Tax Notes. February 5, 1996, 70(6): pp. 631-32.
Article describes efforts by House and Senate leaders in February of 1996 to reach a balanced budget deal. Author states that the Congressional leaders believed that a balanced budget deal was within reach. Author also discusses Congressional efforts to pass debt limit legislation. Finally, author describes efforts by Congress to extend several expired tax breaks by including a measure to extend these tax breaks in the debt limit legislation.
SUBJ MATTER: TAX/ SUBJ MATTER: PUBLIC POLICY.

Glover, Peter. "Arbitration avoidance." Solicitors Journal. March, 29, 1996. 140(12): pp. 312-13.
Article discusses the ramifications of the increase of the small claims jurisdiction in the English county court from 1,000 pounds to 3,000 pounds and what can be done to avoid reference of a majority of the new plaints from being subject to automatic reference to arbitration. Author discusses the practical considerations, full scheduled damages, complex cases and injunctions in terms of the issue. Author concludes that the issue must be dealt with in order to promote the citizens' access to justice.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Godfrey, John. "Budget negotiators near accord on lower-dollar tax provisions." Tax Notes. January 8, 1996, 70(2): pp. 135-136.
The article explains how negotiators from the White House and Congress have moved near an agreement on about a dozen tax proposals despite being stalled out on the general balanced budget talks. It outlines areas of agreement that will raise revenues. It also discusses the bipartisan efforts in Congress to propose alternatives plans to balance the budget.
INST NATURE: GOV'T ENTITIES.

Godfrey, John and Sean Ford. "Negotiators 'suspend' budget talks; Congress awaits the State of the Union." A Tax Notes. January 15, 1996, 709(3): pp. 247-249.
Article describes the extent of the budget impasse between Congressional Republicans and President Clinton. In particular, it discusses a narrowing of differences with regard to tax cuts. However, it also discusses differences that appear to have widened, like corporate welfare reform and tax exemptions for individuals.
INST NATURE: GOV'T ENTITIES.

Goldberger, Charles A. and Patricia Wetmore Gurahian. "Six steps to succeeding in arbitration." Trial. June, 1995, 31(6): pp. 36-42.
Noting the increasing use of arbitration in resolving disputes, author sets forth six important steps that will help an attorney fully take advantage of the arbitral process to resolve the dispute in her client's favor. Author specifically suggests that when approaching arbitration each attorney should: (1) Know the rules of arbitration (in depth knowledge of the rules allows for better strategic planning); (2) Carefully select the arbitrators (possibly the most important step); (3) Hire a stenographer (helpful for arbitrators and for preparation of post-hearing brief); (4) Request a preliminary or administrative hearing (allows for identification and simplification of issues for arbitrators and speeds up total process); (5) Expedite proof effectively (treat arbitration proceedings like trial proceedings and be prepared to make objections and challenges to admissibility of evidence); and (6) Submit a post-hearing brief (helps refocus issues and allows you to provide case law in support of your propositions). Author concludes that following these 6 steps will set you on the right path to winning at any arbitration.
ARB: BINDING ARB- GENERAL.

Goldman, Gary. "Drafting a fair right of first offer lease option" (with form). The Practical Real Estate Lawyer; January, 1995; 11(1): pp. 10, 79-93.
Article discusses risks and benefits of various contract provisions that permit tenants to increase premises size after the start of the initial lease. The author offers a model lease clause for one of these options, the right of first offer. Following the Model Clause is a discussion of various landlord and tenant positions and suggestions to practitioners for negotiation. Article includes a Practice Checklist.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: COMMERCIAL.

Goldman, Geoffrey B.. "Note, Crafting a suitability requirement for the sale of over-the-counter derivatives: should regulators "punish the Wall

Street hounds of greed?"" Columbia Law Review. June, 1995, 95(5): pp. 1112-1159.
Article discusses investment in the over-the-counter derivatives market and the suitability of derivatives for less sophisticated investors who are less suited to sustain the risks. Author compares the regulatory requirements of the SEC (suitability), the CFTC (disclosure), and bank regulations (appropriateness), suggesting the imposition on dealers of a moderate suitability standard that is more strict than the suitability standard of the commodities market. Author advocates a limited two-tier suitability requirement, restricting the dealers to a duty of disclosure for larger more sophisticated firms that meet the qualifications for safe harbor; but for less sophisticated investors who are less likely to understand the instrument that they are buying, requiring an affirmative suitability standard that will force the dealer to take some responsibility for ensuring that the particular transaction is appropriate for the customer. Author concludes that a limited two-tier suitability requirement will provide a greater perception of market integrity as the derivative market expands to serve a variety of investors.
SUBJ MATTER: SECURITIES.

Goldstein, Jordan B.. "Dispute resolution under Chapter 19 of the United States-Canada Free Trade Agreement: did the parties get what they bargained for?" Stanford Journal of International Law. Winter, 1995, 31(1): pp. 275-304.
Note examines the system in practice for resolving disputes under the United States-Canada Free Trade Agreement (FTA), emphasizing the role of the appeals board, the Extraordinary Challenge Committee (ECC). Note explains that it is in the ECCs that the meaning of the "correct application" of domestic law has been debated and that conflict over the meaning of the dispute-resolution provisions is especially evident. Note gives an overview of the United States antidumpting/countervailing-duty law and the dispute-resolution mechanisms adopted by the FTA. Note also explores the role of bilateral panels and the ECCs as they pertain to the FTA and the North American Free Trade Agreement.
SUBJ MATTER: INT'L.

Golin, Jonathan. "Tiger by the Tail." ABA Journal. February, 1995. 81: pp. 62-65.
Article discusses the increasing participation of American law firms in the transformation of Vietnam from socialist to free market economy. Personal interviews with the attorneys involved explain the advantages and disadvantages of doing business and practicing law in a country without a solid legal structure. Article discusses possibilities for the future and provides a list of some of the major American corporations and the extent of their involvement in Vietnam.

SUBJ MATTER: INT'L/ COMPARISONS: CROSS-CULTURAL.

Gonick, Peter B.. "Shoring up employer bargaining power by sandbagging nonunion workers." (Case Note). Washington Law Review. January, 1995, 70(1): pp. 203 - 25.
Note discusses a Washington Court of Appeals decision in which the public policy provision of Washington's little Norris-LaGuardia Act was interpreted to apply to union activity only, denying nonunion workers protection for concerted activities. The author argues that the decision is inconsistent with state and federal law and with sound labor policy. He suggests an alternative interpretation of the public policy provision. Note: Subsequent to publication, the Supreme Court of Washington reversed the Court of Appeals decision in an opinion consistent with the analysis in this Note. Bravo v. Dolsen Cos., 888 P.2d. 147 (Wash. 1995).
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Goodman, Lee. "Should you accept your opponent's choice of mediator?" Illinois Bar Journal. January, 1995, 83(1): pp. 35-36.
Article discusses the questions that attorneys should ask themselves when considering a mediator. Author notes that neutrality, professional association, training, experience in litigation and cost are important bases for choice of mediator. Author concludes that in most cases, it is best to accept opponent's choice of mediator as opposed to disputing the choice of mediator, thereby risking the loss of an opportunity to resolve the dispute without litigation.
MED: RELATED PURPOSES- THEORY AND STRATEGIES/ MED: OBTAINING AGREEMENT TO USE.

Goss, Joanne. "An introduction to alternative dispute resolution." Alberta Law Review. October, 1995, 34(1): pp. 1-33.
Author discusses the history and important features of alternative dispute resolution (ADR). Author details various methods of ADR including the history, terminology, benefits and drawbacks of each method. Author concludes that ADR is important addition to litigation and should not replace litigation.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ MED: RELATED PROCESSES-GENERAL/ ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Gotanda, John Y. "Awarding interest in international arbitration." American Journal of International Law. January, 1996, 90(1): pp. 40-63.
The article discusses how the arbitration of disputes between transnational parties has led to standardization in many areas of arbitration law. However, the standardization has not evolved in areas involving

compensatory interest. The author describes the methods tribunals in different parts of world award interest damages. In particular, the author compares how countries in Europe, North America, South America, Asia, and the Middle East deal with awarding compensatory interest. Finally, he describes the 'model approach' for awarding interests.
ARB: BINDING ARB- GENERAL.

Gotlob, David and David A. Dilts. "Accounting images and the reality of collective bargaining." Journal of Collective Negotiations in the Public Sector. Spring, 1996, 25(2): pp. 89-98.
Article addresses the use of accounting images in collective bargaining, where management often views accounting as objective economic history reflecting not just perception but actual reality. Authors suggest that since unions rarely adopt this view, philosophical bipolarization can occur during negotiations, creating impasse. The suggested course of behavior is for management to recognize the functions of accounting beyond providing a historical record, to accept valid criticism from the union concerning accounting processes and to educate union officials about the processes in an effort to decrease mistrust and achieve successful collective bargaining.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Gould, David G.. "Canadian Dispute Resolution Corporation." Alberta Law Review. October, 1995, 34(1): pp. 284-96.
Author provides background of corporation and details why mediation is preferred over litigation. Author discusses role of corporation in mediating disputes and benefits of mediation. Author then discusses when it is appropriate to mediate disputes.
MED: RELATED PROCESSES-GENERAL.

Gradwohl, John M.. "Current dimensions of the Federal Arbitration Act in Nebraska." Nebraska Law Review. 1995-Spring. 74(2): pp. 304-23.
Article recounts the U.S. Supreme Court's decisions that have led to state law being preempted by the FAA and describes its impact in Nebraska courts. Article notes that the FAA preempts Nebraska's long-standing constitutional prohibitions against enforcing arbitration agreements. After detailing many of the issues subject to arbitration, the author states that the Court's decision still leaves unclear whether an arbitrator might have the authority to award punitive damages in Nebraska contracts, contrary to strong state public policy.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ REQUIREMENTS: STATUTORY OR RULES.

Graham, Harry and David Dinardo. "Grievance arbitration results in a large public employer". Journal of Collective Negotiations in the Public Sector; Spring, 1995; 24(2): pp. 147-150.
Article reports on the outcomes of grievance arbitrations at a large public employer in the midwest. Author compares the results from these arbitrations with national data as reported by the American Arbitration Association and the Federal Mediation and Conciliation Service. Author notes that tripartiate panels more frequently produced more favorable results for the employer.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Gray, Kevin C.. "Torts - Wagshal v. Foster: mediators, case evaluators, and other neutrals - should they be absolutely immune?". The University of Memphis Law Review; Spring, 1996; 26(3): pp. 1229-50.
Article discusses whether mediators involved in ADR processes should receive historical judicial immunity. Article provides reasoning behind judicial disagreement on the issue. Author concludes that the quality of neutrals in ADR processes should be assured by making them civilly liable for any wrongful conduct instead of providing them with absolute judicial immunity.
3RD PARTY: PRACTICE OF LAW/ COMPARISONS: HISTORICAL/ QUALITY CONTROL.

Greenslade, Dick. "Small claims arbitration and the solicitor." New Law Journal. February 2, 1996, 146(6729): pp. 118-20.
Article discusses a new rule which provides that any action in which the amount claimed does not exceed $3,000 shall automatically be referred to arbitration. Author notes that there are exceptions to the rule for any claim which, in total, does not exceed $3,000 but where the personal injury damages element exceeds $1,000, and for claims for possession of land. In addition, author explains that even if the claim does not exceed $1,000 or $3,000, a party may still apply to have an action referred to trial by showing either a difficult point of law or a question of fact "of complexity." Finally, author explores the role of the solicitor in arbitration proceedings.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: INT'L.

Gregorczuk, Helen. "The appropriateness of mediation in international environmental disputes." Australian Dispute Resolution Journal. February, 1996, 7(1): pp. 47-60.
Article focuses on mediation, as a public international dispute resolution process, in the environmental field. Author provides an overview of international law, its sources, and general enforceability, focusing

particularly on "hard" and "soft" environmental regulation. Next, author explains mediation in the context of environmental negotiations between nations. Finally, author critiques the effectiveness of mediation.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: INT'L/ SUBJ MATTER: ENVIRONMENT.

Grenig, Jay E.. "When due process is due: the courts and labor arbitration". Detroit College of Law at Michigan State University Law Review; Fall 1995; 3: pp. 889-901.
Article examines judicial determinations regarding arbitrators' exercise of judgment regarding due process in employment disputes. Article presents judicial concerns with having arbitrators determine the existence of due process. Author concludes that arbitrators should provide remedies that consider both the significance of any due process violation and the employee misconduct that led to termination.
SUBJ MATTER: LABOR-GENERAL/ 3RD PARTY: PRACTICE OF LAW.

Griffith, Thomas J.. "Alternative Dispute Resolution in Employment Law Cases: The Experience of One Fortune 500 Company." (Presentation of Eaton Corporation at the 1994 Labor Law Seminar sponsored by the Labor Law Section of the Cleveland Bar Association) (Panel Discussion). Corporate Counsel's Quarterly. January, 1995, 11(1): pp. 1-51.
Article contains a summary of a presentation made by the Eaton Corporation to a 1994 labor law seminar. Eaton Corp. explains the reasoning behind the creation and implementation of its employment termination dispute resolution program. The program utilizes mediation and voluntary arbitration; the article contains a detailed description of the process involved, including reproductions of Eaton Corp.'s forms and rules.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ SUBJ MATTER: CORPORATE.

Griffith, Gavan. "La Cour Permanente d'Arbitrage" (the Permanent Court of Arbitration at the Hague). Australian Law Journal. June, 1995, 69(6): pp. 434-439.
Article describes the historical development, the administrative organization, the powers, and the recent changes adopted to conform to international standards by the Permanent Court of Arbitration (PCA), the oldest inter-governmental institution for international dispute settlement, established by the 1899 Hague Peace Conference. Author notes the periodic success of the PCA, partially attributing the PCA's lack of use to the availability of other courts and tribunals for the settlement of international disputes like the International Court of Justice. Author concludes that the small case load and the improved mainstream procedures of the PCA make

the PCA an attractive forum for the resolution of disputes between one or more state parties.
INST NATURE: JUSTICE SYSTEM-OTHER/ SUBJ MATTER: INT'L.

Gross, E. Lyle. "The expert witness and mediation." Alberta Law Review. October, 1995, 34(1): pp. 69-85.
Article examines the role of the expert witness in mediation. After critiquing the current use of expert witnesses in adjudicative proceedings, the article suggests that mediation may eventually prove to be the only pure forum where experts can function without compromise and can return to their intended role as educators to the court. The article concludes with a guide to preparing the expert witness for dispute resolution.
MED: RELATED PROCESSES-GENERAL.

Grossnickle, Janet M.. "How the Federal Arbitration Act will keep consumers and corporations out of the courtroom (case note)". Boston College Law Review; July, 1995; 36(4): pp. 769–792.
Author examines 1995 Supreme Court decision for purposes of describing its probable impact on state statutes regulating consumer and commercial contracts. Article provides detailed account of history behind Federal Arbitration Act and its subsequent interpretation by the Supreme Court up to the recent Terminix decision. After evaluating recent decision, author concludes with suggestion that holding works to block states' efforts to protect consumer in commercial contracts and gives Act an impact that Congress never intended.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: CONSUMER.

Grunewald, Mark H.. "Freedom of information and confidentiality under the Administrative Dispute Resolution Act". The Administrative Law Journal of the American University; Winter, 1996; 9(4): pp. 985-1005.
Article discusses the degree of confidentiality to be accorded information created in ADR proceedings. Author examines the resolution of confidentiality issues in the federal administrative setting under the Administrative Dispute Resolution Act of 1990 and conflicts with the FOIA. Author recommends legislation that would give full effect to confidentiality standards in federal administrative proceedings.
CONFIDENTIALITY.

Grusd, Neville. "Getting your clients the financing they need". Journal of Accountancy; May, 1995; 179(5): pp. 44-47.
Article demonstrates how CPAs may prepare complete financing packages for their clients that will make a positive impression on potential lenders. Author stresses the positive role that CPAs may play by facilitating and

providing information during the proposal process, as well as ensuring that each party complies with the agreement after it is reached. Article concludes by suggesting that CPAs who prove effective in facilitation will not only retain their existing clients, but also obtain new clients as a result of their success.
SUBJ MATTER: GENERAL.

Gruskin, Sophia. "Negotiating the relationship of HIV/AIDS to reproductive health and reproductive rights." American University Law Review. April, 1995. 44(4): pp. 1191-1205.
Article discusses the increasing complexity of HIV/AIDS issues as related to reproductive health and reproductive rights matters. Author begins with an introduction into the HIV pandemic. Author discusses HIV/AIDS and women, AIDS and human rights and the international response to these issues. She concludes with a positive review of the Cairo, Egypt, International Conference on Population and Development, which addressed the lack of attention to reproductive rights of women with HIV and the right of people to chose methods of family planning. She lastly admits that the principles of non-discrimination should not be discriminatory in their application.
MED: PUBLIC POLICY DIALOGUE/ SUBJ MATTER: INT'L.

Gudridge, Patrick O.. "Title VII arbitration." Berkeley Journal of Employment and Labor Law. Summer, 1995, 16(1): pp. 209-287.
Note examines if claims arising out of employment rights statutes are best adjudicated in arbitration or traditional litigation. Author criticizes the United States Supreme Court's approach and suggests alternative approaches to deciding the appropriateness of arbitration for employment disputes. Author concludes by stating that Title VII actions should be resolved through traditional litigation, rather than arbitration.
SUBJ MATTER: CIVIL RIGHTS.

Gunning, Isabelle R. "Diversity issues in mediation: controlling negative cultural myths". Journal of Dispute Resolution; Spring, 1995; 1: pp. 55-93.
Article explores a criticism of mediation on the grounds that it disserves parties who are members of powerless and disadvantaged members of society. Author examines the proposition that mediation's informality and lack of procedure disadvantages members of minority groups and women. Finally, article offers solutions to the problem, which includes increasing level of mediation intervention.
MED: RELATED PROCESSES-GENERAL/ COMPARISONS: CROSS-CULTURAL.

Haase, Heather J.. "In defense of parties' rights to limit arbitral awards under the Federal Arbitration Act". (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends) (Case Note). Wake Forest Law Review; SPRING, 1996 31(1): pp. 309-36.
Author discusses the recent U.S. Supreme Court case of Mastrobuono v. Shearson Lehman Hutton, Inc., which held that arbitrators retained authority to award punitive damages despite a choice-of-law clause in the parties' contract that would have led to the application of state law prohibiting such an award. Author examines punitive damages under the Federal Arbitration Act and under state law, and discusses the split in circuit court opinion over punitive damages and choice-of-law clauses. Author concludes that no logical basis exists for courts to ignore the parties' choice of law in order to allow punitive damages.
SUBJ MATTER: GENERAL.

Habegger, Philipp A.. "The 1995 rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation." Journal of International Arbitration. December, 1995, 12(4): pp. 65-73.
Article examines Russia's new rules for international arbitration. These rules are an attempt to encourage international trade, and the possibility of international arbitration resulting from the trade, because the old set of rules were from the communist regime, and thus utterly out of step with a modern economy. Although author applauds efforts, author notes various areas that must change to encourage active international participation.
SUBJ MATTER: INT'L.

Haigh, David R., Alicia K. Kunetzki and Christine M. Antony. "International commercial arbitration and the Canadian experience." Alberta Law Review. October, 1995, 34(1): pp. 137-162.
With particular emphasis on the Canadian experience, the article discusses how international commercial arbitration processes have become more institutionalized and unified in recent years. The United Nations Commission on International Trade Law's (UNCITRAL) Model law is discussed as the key example of the unification of laws movement. The alternative dispute resolution provision of the North American Free Trade Agreement (NAFTA) is also examined. The article then focuses on Canada's contributions to and participation in international commercial arbitration. This section of the article includes a comprehensive survey of Canadian jurisprudence interpreting Canadian international commercial arbitration legislation. The article concludes by asserting that international commercial arbitration will become an increasingly important topic as difficulties inevitably arise between international business partners.

ARB: BINDING ARB- GENERAL/ SUBJ MATTER: INT'L/ SUBJ MATTER: COMMERCIAL.

Halpern, Jennifer J.. "Front Stage, Backstage: The Dramatic Structure of Labor Negotiations (book reviews)". Industrial and Labor Relations Review; July, 1995; 48(4): pp. 853-855.
Article reviews book by Raymond A. Friedman discussing the difficulties inherent in mutual gains bargaining. Article reveals that book examines "dramaturgical model" that is used to describe the two levels of the labor negotiations process: the public and private manifestations of strategy and efforts to compromise. Author comments that book's presentation of examples of labor negotiation process, which were obtained by observing thirteen different organizations, provides reader with education of researching through observation.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Hannah, Richard. "Equity considerations in public sector retirement system governance: a case study of the Tennessee consolidated retirement system". Journal of Collective Negotiations in the Public Sector; Winter, 1996; 25(1): pp. 45-61.
Article, using a case study of the Tennessee Consolidated Retirement System, explores equity considerations in public sector retirement system governance. Author recommends steps governing bodies should take to ensure equitable decisionmaking in the governance process. Author advocates direct employee and retiree participation in retirement system governance as essential to effective resolution of rapidly changing employment and retirement issues.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Harrell, Susan W.. "The Mediation Experience of Family Law Attorneys." Nova Law Review. Fall, 1995. 20(1): pp. 479-94.
Article reports results of a study of mediation use among Florida family law attorneys. Author, who suggests mediation is particularly well-suited for family law cases because of their private nature, reports that use of mediation in such cases has nevertheless stalled. Author reviews criticisms of mediation in family law, including disagreeability of court-mandated mediation with the voluntary nature of the process, gender-based disadvantages of mediation and short supply of legally trained mediators. Based on survey results, author concludes that mediation, although subject to some abuse, is an effective tool for resolution of family law cases and that criticisms of the process are largely unfounded.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL)/ SUBJ MATTER: GENERAL.

Hartnett, W.J.. "The Canadian Foundation for Dispute Resolution." Alberta Law Review. October, 1995, 34(1): pp. 287-89.
Author outlines the mission and objectives of the foundation, the services provided by the foundation, the dispute-resolution protocol developed by the foundation, and the distinctiveness of the foundation which is to be user-focused.
ORGANIZATION POLICIES AND RULES.

Hayford, Stephen L.. "Commercial arbitration in the Supreme Court 1983-1995: a sea change". (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 1-39.
Author discusses thirteen recent U.S. Supreme Court opinions in which the Court has resoundingly endorsed arbitration as a primary forum for resolving commercial disputes, thereby freeing arbitration from judicial supervision, and empowering commercial parties to bargain privately over arbitral terms. Author recommends counsel to exercise special care in advising clients on arbitration and in drafting arbitration clauses. .
SUBJ MATTER: COMMERCIAL/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Hayford, Stephen L. . "Law in Disarray: Judicial Standards for Vacatur of Commercial Arbitration Awards." Georgia Law Review. 1996, 30(3): pp. 731-842.
Article devotes itself to discussing the proper standards for judicial vacatur of commercial arbitration awards. The article analyzes and critiques the current case law defining the standards for vacatur of these awards. Specifically, the article examines the increasing willingness by the federal judiciary to look behind commercial arbitration awards in an effort to ascertain whether the arbitor's reasoning is so flawed by graves erros of law, fact, or contract interpretation as to waarant its vacatur by a reviewing court.
ARB: JUDICIAL REVIEW.

Hayford, Stephen L. and Michael J. Evers. "The interaction between the employment-at-will doctrine and employer-employee agreements to arbitrate statutory fair employment practices claims: difficult choices for at-will employers". North Carolina Law Review; January, 1995; 73(2): pp. 443-523.
Article discusses the proliferation of employer-employee agreements to arbitrate claims arising out of fair employment statutes subsequent to the Supreme Court's decision in Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991). The authors argue that as mandatory arbitration of fair employment practices claims becomes more widespread, employers may

inadvertently limit or even relinquish their remaining discretion allowed under the modern employment-at-will doctrine. This, they contend, will result from the interaction between the judicial acceptance of agreements to arbitrate statutory fair employment practices claims and the three primary exceptions to the employment-at-will doctrine: the implied covenant of good faith, the implied-in-fact contract terms/enforceable promises doctrine and the public policy exception.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Hazard, Geoffrey C., Jr.. "The settlement black box." Boston University Law Review. November, 1995, 75(5): pp. 1257-72.
Article discusses attorneys' role in negotiating settlements and high level of trust and responsibility required between a claimant and their attorney in those negotiations. Author explores asbestos-related claims as a basis for discussing attorneys' heightened level of responsibility in global settlement negotiations versus the attorney's own self-interest. Author then discusses objections to these negotiated settlements with respect to personal injury claims, Rule 23 of the Federal Rules of Civil Procedure and attorneys' violations of ethics in negotiating these settlements. Author concludes that dissatisfied clients have to prove fraud by the attorney and that negotiated settlements are structurally impervious to outside scrutiny - thus requiring a heightened level of trust between the attorney and the claimant.
SETTLEMENT: AUTHORITY/ ETHICS: GENERAL.

Heatherly, Michael J.. "Negotiating from strength: sure steps toward a settlement". Trial; August, 1995; 31(8): pp. 58-63.
Article explains the majority opinion of the statutory question presented in the Gustafson case. Author presents criticisms of the majority opinion by looking to legislative history, legislative canons, public policy issues, and judicial precedents. An analysis of section 12(2)'s scope is presented relating to secondary market transactions and registered public offerings.
SUBJ MATTER: SECURITIES.

Hebdon, Robert. "The Freezing Effect of Public Sector Bargaining: The Case of Ontario Crown Employees". Journal of Collective Negotiations in the Public Sector. Summer, 1995, 24: pp. 207-218.
Article examines the narrow scope of employees, unions and the bargaining process on negotiable issues in the Ontario government. Author determined that 3rd-party negotiation procedures have a "freezing effect" on collective bargaining. Author argues that management's rights are enshrined, and negotiations are delayed.
NEG: TACTICS, STRATEGIES AND TECHNIQUES- GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Hebdon, Robert and Douglas Hyatt. "Workplace innovation in the public sector: the case of the Office of the Ontario Registrar General". Journal of Collective Negotiations in the Public Sector; Winter, 1996; 25(1): pp. 63-81.
Article, using a case study of a program implemented in the Office of the Registrar General for Ontario, Canada, describes public sector employee involvement (EI) workplace innovation programs. Authors provide reasons why workplace innovation schemes are uncommon in the public sector as opposed to the private sector. Authors describe benefits of EI projects and theorize that, despite barriers, EI can be an effective vehicle for creating workplace innovation in the public sector.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Hedley, Steve. "C.I.F. Contract - commercial arbitration - acceptance of anticipatory breach." Cambridge Law Journal. March 1996, 55(1): pp. 14-16.
Article discusses the C.I.F. contract, commercial arbitration and acceptance of anticipatory breach in terms of Vitol SA v. Norelf Ltd., (1995), 3 W.L.R. 549. A brief summary of the facts are given and the appeal is discussed in terms of the Arbitration Act of 1979. Author concludes that Vitol won the case due to the way the certificate was framed rather than on the legal mertis, thus in similar future cases, the opposite result should be expected.
ARB: BINDING ARB- GENERAL.

Henderson, Douglas A.. "Avoiding litigation with the mini-trial: the corporation bottom line as dispute resolution technique." South Carolina Law Review. Winter, 1996, 46(2): pp. 237-262.
Note discusses the effectiveness of the mini-trial. The article examines the results of a survey that solicited the attitudes and experiences of construction lawyers who used the mini-trial to solve disputes. Author explores the correlation between previous mini-trial experience and the success of the mini-trial technique. He concludes by stating that the published views of the mini-trial are different from the actual experiences of lawyers who have used the technique.
SUBJ MATTER: CONSTRUCTION.

Henderson, Douglas A.. "Mediation success: an empirical analysis." Ohio State Journal on Dispute Resolution. 1996, Winter, 11: pp. 105-147.
Author focuses on the construction industry and attempts to determine what factors are determinative in mediation success. Author identifies the main factors of influence as situational factors, mediator characteristics and

procedural status and rules. Author reviews each of these factors and determines that procedural rules is the most important factor in mediation success. Author concludes by arguing that in construction disputes the most critical aspect of mediation is who sets the stage by developing the rules.
MED: RELATED PURPOSES- THEORY AND STRATEGIES.

Hertz, Michelle. "The National Basketball Association and the National Basketball Players' Association opt to cap off the 1998 collective bargaining agreement with a full court press." Marquette Sports Law Journal. Spring, 1995, 219(2): pp. 251-77.
Note provides a brief history of the NBA's and the NBPA's labor relationship; an overview of the pertinent sections of the current Collective Bargaining agreement; and an account of the first litigated case of salary cap circumvention. Note also discusses how the court's decision in the salary cap case may apply to the future of the opt-out clause in the NBA. Author concludes that some form of the litigated opt-out clause which permits the player some mobility while retaining some salary cap controls will be the perfect compromise.
SUBJ MATTER: SPORTS & ENTERTAINMENT.

Hetherington, H. Lee. "Negotiating lessons from Iran: synthesizing Langdell & MacCrate." Catholic University Law Review. 1995-Spring, 44(3): pp. 675-707.
Article advocates that legal educators should implement the clinical use of negotiation to better assist students in their transition into legal profession. The author offers a methodology for teaching negotiation that employs the case method approach to improving the fundamental skill of negotiating. As an example, the author carefully analyzes the Iranian Hostage Negotiation of 1979-1981 to illustrate how the use of leverage created, prolonged, yet ultimately resolved the crisis.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ TEACHING.

Hill, Richard. "Non-adversarial mediation." Journal of International Arbitration. December, 1995, 12(4): pp. 135-43.
Article examines various methods of mediation based on a non-adversarial approach. Author demonstrates that inherent goals of mediation are consistent with a non-adversarial model. Author then notes specific character traits and practices that a mediator can use to foster non-adversarial mediation.
MED: RELATED PROCESSES-GENERAL.

Hirst, Alastair. "International commercial arbitration in the Middle East: how the major arbitration institutions work in practice, and how they compare". Middle East Executive Reports; May, 1995; 18(5): p. 8.
Article examines the role that international institutions may play in resolving commercial disputes between Middle Eastern countries. Author discusses the services that these institutions provide, as well as the advantages and disadvantages to using such institutions. Article concludes by describing eight of these international institutions.
ARB: SELECTION OF ARBITRATOR/ SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L.

Hjelmeset, Fred S.. "Impeachment of party by Prior Inconsistent Statement in compromise negotiations: admissibility under Federal Rule of Evidence 408". Cleveland State Law Review; Winter, 1995; 37(4) pp. 75-114.
Note discusses the concept of compromise and the public policy in promoting compromise and settlement. Furthermore, Author analyzes whether Rule 408 is maximizing its potential to effectively promote settlements. Author concludes by proposing an amendment to Rule 408, which would strengthen the inducement to settle claims.
SETTLEMENT: PRESSURES TO SETTLE.

Hodges, Ann C.. "Dispute resolution under the Americans with Disabilities Act: a report to the Administrative Conference of the United States". The Administrative Law Journal of the American University; Winter, 1996; 9(4): pp. 1007-1103.
Article examines the current system of dispute resolution under the ADA and alternatives to existing methods. Author makes recommendations for improving the dispute resolution procedures, including a mediation program.
SUBJ MATTER: LABOR-DISCRIMINATION/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ MED: PUBLIC POLICY DIALOGUE.

Hodges, Ann C.. "Mediation and the Americans with Disabilities Act". Georgia Law Review; Winter, 1996; 30(2): pp. 431-507.
Article analyzes the use of mediation in ADA disputes. Article provides an overview of mediation and its relationship to the ADA as an effective dispute resolution mechanism. Author compares mediation use under the ADA with use by the EEOC and ACUS. Author concludes that effective mediation techniques will advance the antidiscrimination goals of the ADA by providing for more efficient resolution of disputes.
MED: RELATED PROCESSES-GENERAL/ REQUIREMENTS: STATUTORY OR RULES/ LEGISLATION

Hoellering, Michael F.. "International arbitration under U.S. law and AAA rules" (American Arbitration Association). Dispute Resolution Journal; January, 1995; 50(1): pp. 25-36.
Article provides an overview of the impact of U.S. law and American Arbitration Association rules on international arbitration. Specific issues discussed include arbitrability, place of arbitration, choice of law, choice of arbitrators, remedies and enforcement of international arbitration awards. Article also includes discussion of recent landmark U.S. Supreme Court cases that have expanded significantly the domain of arbitration in the United States.
SUBJ MATTER: INT'L/ ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB.

Hoew, Vicki. "IRS rules remediation-related costs deductible." The Tax Advisor. April 1996, 27: pp. 205-06.
Article reports on the IRS withdrawal of its recent letter ruling on the deductibility of environmental clean up costs. Under the new ruling, such costs are deductible. Author explores the reasons for the change and the beneficial future effect for taxpayers.
SUBJ MATTER: TAX.

Holden, Blythe A.. "Tilting the table: collective bargaining after National Baseball Ass'n v. Williams". Harvard Journal of Law and Public Policy; Fall, 1995; 19: pp. 228-236.
Article reviews the implications of the Williams decision on collective bargaining between professional sports leagues and players associations. Author analyzes the case, which extended the antitrust exemption for collective bargaining agreements beyond the expiration date of the agreement itself, thus providing for antitrust immunity throughout the entire collective bargaining relationship. The author concludes that the holding is too broad and harms the collective bargaining process by giving sports leagues too much leverage.
SUBJ MATTER: LABOR-GENERAL.

Hopper, Penelope. "Railroading Essential Rights the Status of Judicial Review of Alleged Due Process Violations In Arbitration Hearings Under the Railway Labor Act". Journal of Dispute Resolution; Spring, 1995; 1: pp. 169-79.
This note analyzes how the Shaffi v. P.L.C. British Airways decision may likely lead to a trend in which arbitration pursuant to the Railway Labor Act (RLA) will be subject to judicial review. The author argues that despite the fact that the RLA only provides for judicial review in specific circumstances, the Second Circuit's decision properly recognized that the

omission of due process violations in this express list of reviewable issues is not indicative of congressional intent to foreclose jurisdiction. The author contends that the decision may provide a leading example of a backlash against finality of arbitration hearings when a due process violation is at stake.
SUBJ MATTER: GENERAL.

Hopper, Penelope. "Mandatory Arbitration and Title VII: Can employees ever see their rights vindicated through statutory clauses of action." Journal of Dispute Resolution. 1995, Fall, 2. Article provides an overview and history of mandatory arbitration in the employment context. Author evaluates Metz v. Merrill Lynch, Pierce, Fenner & Smith, 39 F.3d 1482 (10th Cir. 1994), to determine how Gilmer was interpreted by the tenth circuit. Author concludes that although Gilmer left the issue of unequal bargaining power to lower courts, lower courts such as the tenth circuit have accepted mandatory arbitration carte blanche without evaluating the bargaining position of the parties.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Horlick, Gary N.. "Dispute resolution mechanism: will the United States play by the rules?". Journal of World Trade (Law-Economics-Public Policy); April, 1995; 29(2): pp. 163-171.
Article discusses the United States' compliance with the new World Trade Organization dispute resolution rules. Author first notes that the United States has historically complied with GATT dispute resolution procedures, and then notes that Congress, in the implementing legislation, creates such a complex procedure that makes it easier for the United States to not comply.
SUBJ MATTER: INT'L.

Horlick, Gary N.. "WTO dispute settlement and the Dole Commission." Journal of World Trade. December, 1995, 29(6): pp. 45-48.
Article examines measures taken by United States government to protect United States sovereignty, while still submitting to the WTO's binding arbitration provisions. Author notes debate in Congress over who should serve on a United States panel to monitor encroachment upon United States sovereignty. Author appears to agree with others who want federal judges, either active or retired, to serve this purpose because they are experienced at being neutral in light of political opposition.
SUBJ MATTER: INT'L.

Horlick, Gary N. and Eleanor C. Shea. "The World Trade Organization Antidumping Agreement." Journal of World Trade. February, 1995, 29(1): pp. 5-31.

Article discusses the Antidumping Agreement in the World Trade Organization (WTO) Agreement. This Agreement is the first worldwide agreement on antidumping, and in conjunction with the binding dispute resolution procedures used by the WTO, the Agreement may usher in a revolution in world antidumping law. The authors present the history of the negotiations leading to the Antidumping Agreement and highlight the major provisions, distinguishing the new provisions from previously existing international antidumping law.
SUBJ MATTER: INT'L/ REQUIREMENTS: STATUTORY OR RULES/ ORGANIZATION POLICIES AND RULES.

Howells, John M.. "The Privacy Act of 1993: A New Zealand Perspective" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 107-21.
Article traces the evolution of New Zealand's Privacy Act of 1993 from scattered restrictions of access to information in particular areas in the 1950's through the Official Information Act passed in 1982 that gives individuals broad access to official information. Author details the extension of privacy to individuals in the private sector by the Privacy Act's establishment of twelve "information privacy principles", such as collection of information directly from the individual by means that are fair and unintrusive as well as access to and correction of collected information. Author discusses various restrictions to the access to information because of concerns for national security, trade secrets, international relations and other reasons. Author expresses concern that the Privacy Act is an overly broad amalgamation of disjunctive objectives that may endanger the exercise of legitimate commercial activities.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Hughes, Scott H.. "Elizabeth's story: exploring power imbalances in divorce mediation." Georgetown Journal of Legal Ethics. Spring, 1995, 8(3): pp. 553-96.
Article includes a brief introduction to divorce mediation, outlining the various goals and attributes of the process, noting the definitions of power and power imbalances and their resulting problems. Author describes a system to deal with such imbalances that occur in mediation and discusses when and how a mediator should terminate a mediation when the power imbalances become irreversible. Author's thesis is based on the notion that, at present, in divorce mediation, there does not exist adequate rules or guidelines to help determine if one spouse is able to adequately protect or represent her own interests.

SUBJ MATTER: FAMILY (DOMESTIC REL).

Hunter, Keith W., and James K. Hoenig. "Construction dispute prevention comes of age." Dispute Resolution Journal. January, 1995, 50(1): pp. 53-54.
California construction insurance company DPIC has created mediation and partnering programs that are reducing transaction costs in construction disputes. Article describes the formation and success of DPIC's "Mediation Works!" and "Partnered/Team Cover" programs.
SUBJ MATTER: CONSTRUCTION/ MED: RELATED PROCESSES-GENERAL.

Hurder, Alex J.. "Negotiating the lawyer-client relationship: a search for equality and collaboration". Buffalo Law Review; Winter, 1996; 44(1): pp. 71-99.
Note discusses how relationships of equality and collaboration between lawyers and clients can be created and sustained. Note focuses on negotiation as the process for making joint decisions. Author argues that negotiation of the terms of the lawyer-client relationship is an essential function of legal interviewing and counseling.
ETHICS: GENERAL/ ROLE OF LAWYERS.

Hurder, Alex J.. V"Women, agency, and the law: mediations of the novel in the late eighteenth century". Harvard Women's Law Journal; Spring, 1996; 19; pp. 269-292.
Article discusses interrelation of literature and the law. Author suggests that the novel played a key role in defining concepts of rights and notions of the legal subject in the eighteenth century. Author examines three selected novels by Hays, Wollstonecraft, and Edgeworth and their contribution to the cultural dialogues in relation to women.
COMPARISONS: HISTORICAL.

Hurlburt, W.H.. "A new bottle for renewed wine: the Arbitration Act 1991." Alberta Law Review. October, 1995, 341(1): pp. 86-136.
Author discusses features of 1991 Arbitration Act passed in Alberta and similar acts passed in Ontario and Saskatchewan. Author outlines the purpose and primary functions of the Act and its effects in the judicial system. Author discusses significance of Act for drafters and concludes that Act has articulated clear policies of party control, fairness and efficiency in the arbitration process.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: GOV'T.

Huss, Erin Parkin. "Response to the experimental role of settlement judges in unfair labor practice proceedings:. Arizona Law Review; FALL, 1995; 37: pp. 895-912.
Article discusses the proposal of the National Labor Relations Board Commissioner to assign some of the agency's administrative law judges to conduct settlement negotiations with conflicting parties and to give them the power necessary to work effectively in these settlements. Author asserts that the Commissioner's experiment is unnecessary, not cost efficient and may even have a negative effect on settlement discussions at the regional level. Author contends that the NLRB should change the standard of review for settlements to one that requires only that the settlement not be clearly repugnant to the purposes and policies of the National Labor Relations Act.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Hutchinson, Cambell C.. "The case for mandatory mediation." Loyola Law Review. 1996- Spring, 42(1): pp. 85-95.
Article argues for mandatory mediation prior to allowance of using the court's precious resources. Author suggests that litigation has turned into a battle forum for lawyers who sometimes lose sight of the real objective and of the economic restraints of the client; the goal has become to win at all costs. Author suggests this mandatory arbitration to keep communications open and allow the parties to guide their own destinies instead of being at the mercy of a stranger. The author believes that the court should be used as a last resort and examines the benefit of mandatory arbitration as the most viable alternative to a more efficient system.
MED: RELATED PROCESSES-GENERAL.

"IRS may test appeals mediation procedure". Journal of Accountancy; March, 1995; 179(3): pp. 31.
IRS is considering a mediation procedure in which the taxpayer and IRS are to negotiate a settlement assisted by a neutral party. Both parties must agree to the nonbinding mediation. IRS wants to adopt the procedure in order to resolve more tax controversies without litigation.
MED: ENCOURAGING COMM AND NEG.

Inderbitzin, Sarah L., Nicholas Targ, James L. Byrnes, Bruce A. Johnson. "The use of alternative dispute resolution in natural resource damage assessments". William and Mary Environmental Law and Policy Review; Fall, 1995; 20(1): pp. 1-31.
Article discusses the use of alternative dispute resolution (ADR) techniques in the resolution of natural resource damage assessments (NRDAs). Authors review ADR methods and the Department of Interior's NRDA regulations,

suggesting appropriate uses of ADR in implementing the regulations. Authors compare two oil spill negotiations, one which used ADR effectively and one which did not. Authors conclude that although the use of ADR is not mandated by regulation, ADR can serve as an effective tool in conducting NRDAs.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: ENVIRONMENT.

"Is international law justiciable in English courts?" Cambridge Law Journal. July, 1995; 54(2): pp. 230-232.
Author addresses issue of whether English courts treat international law as a "fiction" by analyzing 1994 case Westland Helicopters Ltd. v. Arab Organization for Industrialization (AOI). After detailed description of formation of AOI and its eventual reconception under the law of Egypt, author focuses on Westland Helicopters' efforts to obtain compensation for commercial contract through International Chamber of Commerce arbitration and subsequent attempt to enforce judgment against AOI in England. Article describes decision of English Commercial Court holding that case did not present disputed question of international law, and author concludes by stating that future litigation will determine whether such a line may be so sharply drawn.
ARB: JUDICIAL REVIEW/ SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L

Jacobs, Joel S.. "Compromising NEPA? The interplay between settlement agreements and the National Environmental Policy Act." Harvard Environmental Law Review. Winter, 1996, 19(1): pp. 113-156.
Note examines the procedural constraints for government agencies in negotiating settlements under the National Environment Policy Act of 1969 (NEPA). Author discusses the compatibility of settlement agreements with the NEPA process. Note concludes that the advantages of settlements outweigh the risks of decreased environmental policy enforcement.
SUBJ MATTER: ENVIRONMENT.

Jacobs, Marcus S.. "The spectre of section 47 of the Model Uniform Legislation". Australian Law Journal; October, 1995; 69: pp. 822-832.
Article discusses how the varying interpretations given to section 47 of the Model Uniform Legislation (Commercial Arbitration Acts) by the Supreme Courts of Suth Australia, Victoria and New South Wales have created uncertainty and litigation. Author asserts that a liberal interpretation of the powers conferred by section 47 is consistent with the intent and purpose of the Model Uniform Legislation, which is to make arbitration an attractive, cheap and speedy dispute resolution mechanism. This article also traces and discusses the various cases interpreting section 47.

SUBJ MATTER: INT'L/ ARB: BINDING ARB- GENERAL.

James, Shelly R.. "Arbitration in the securities field: does the present system of arbitration between small investors and brokerage firms really protect anyone?". The Journal of Corporation Law; Winter, 1996; 21(2): pp. 363-389.
Note focuses on development of arbitration as an alternative to the courts in disputes between investors and broker-dealers. Author analyzes NASD arbitration awards to examine their fairness in dealing with investors. Author concludes system is fair, and answers critics' arguments while presenting suggestions for change.
SUBJ MATTER: CORPORATE/ SUBJ MATTER: SECURITIES.

Johnson, Donald E.. "Has Allied-Bruce Terminex Cos. v. Dobson exterminated Alabama's anti-arbitration rule?". Alabama Law Review; Winter, 1996; 47(2): pp. 577-614.
Article explores the historical hostility towards ADR and the development of ADR as a favored mechanism for resolving disputes. Article examines the effect that the Supreme Court's ruling in the Allied-Bruce Terminix case will have on expanding the acceptance of arbitration under state laws. Author concludes that the decision will significantly impact consumer protection principles.
SUBJ MATTER: CONSUMER/ SUBJ MATTER: GENERAL/ COURT REFORM.

Johnston, Douglas M.. "Religion and conflict resolution". The Fletcher Forum of World Affairs; Winter,-Spring, 1996; 20: pp. 53-61.
Article discusses the use of religious doctrines in helping to resolve international conflicts. Author analyzes the four major world religions, determining that the similarities between them can be utilized in mediation to prevent violence and promote peace. The author concludes that all religions stress peacemaking and tolerance, ideals which provide a common ground for opposing parties of differing faiths during the negotiations.
NEG: CULTURAL CONSIDERATIONS.

Jones III, Isham R.. "The Federal Arbitration Act and Section 2's 'involving commerce' requirement: the final step towards complete federal preemption over state law and policy." Journal of Dispute Resolution. 1995, Fall, 2: pp. 327-349.
Case analysis of Allied-Bruce Terminix v. Dobson, 115 S. Ct. 834 (1995). In this case, the Supreme Court of the United States held that section 2 of the FAA should be read expansively. Author concludes by stating that because any contract containing a valid arbitration agreement involves

interstate commerce, the FAA will preempt state anti-arbitration law and enforce the arbitration agreement in all instances.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB.

Jones III, Isham R.. "Exemplary Awards in Securities Arbitration: Short-Circuited Rights to Punitive Damages"; Journal of Dispute Resolution; Spring, 1995; 1: pp. 129-53.
This note traces the Mastrobuono v. Shearson Lehman Hutton, Inc. decision through the Supreme Court and analyzes the judicial treatment of punitive damage awards in securities arbitration. The author concludes that the Court's decision was decided on general principles of contract law, rather than a broad analysis of preemption of state law by the FAA. Thus, the author argues that the securities industry will be able to avoid future punitive damage awards by simply amending their arbitration provisions with investors.
SUBJ MATTER: SECURITIES.

Jorgensen, Ann B.. "A review of mandatory arbitration in Illinois". Illinois Bar Journal; July, 1995; 83(7): pp. 364-370.
Article provides a discussion of the arbitration program in Illinois under the Mandatory Arbitration Act effective since 1987. Author describes the process including the selection of arbitrators, discovery, and the right to contribution. Various cases are analyzed to show how Rules 91 and 93 have been interpreted with regard to the right of parties to reject an arbitration award. Article also explains the normative conduct of the parties during the arbitration process.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: GENERAL/ REQUIREMENTS: MANDATE TO USE.

Joseph, Katherine L.. "Victim-offender mediation: what social & political factors will affect its development?" Ohio State Journal on Dispute Resolution. Winter, 1996, 11(1): pp. 207-225.
Article discusses victim-offender mediation programs and the potential benefits involved. In these programs, victims and offenders meet face-to-face, forcing the offender to realize the consequences of his or her crimes. Author notes several factors that will influence the future success of these programs and offers suggestions to increase the chances they will be successful.
MED: RELATED PROCESSES-GENERAL.

Jost, Timothy Stolzfus. "Schichtungsstellen and Gutachterkommissionen: the german approach to extrajudicial malpractice claims resolution." Ohio State Journal on Dispute Resolution. 1996, Winter, 11: pp. 81-103.

Article is based on a study conducted in Germany researching ADR techniques in medical cases. Author provides an overview of the German ADR program, tracing its history and development. Author attempts to determine why ADR in medical cases has been unsuccessful in the United States, while Germany has experienced a growth in this area. Author reports on the strengths and weaknesses of the german program and how it can be used to assist the growth of the United States ADR approach.
COMPARISONS: CROSS-CULTURAL.

Kandyba, Mary Louise. "Protecting railroad workers with the ADA." Trial. March, 1995, 31(3): pp.55-57.
The author discusses the benefit the Americans with Disabilities Act (ADA) may provide to injured railroad workers, who do not receive vocational rehabilitation under the Federal Employer's Liability Act (FELA) when it is determined that they have a permanent disability. The author argues that railroad workers are covered by ADA and that ADA is not preempted by FELA or the Railray Labor Act (RLA). Finally, the author notes that procedurally the attorney should file the ADA claim with the FELA action if it is pending in state court.
SUBJ MATTER: LABOR-GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Katsoris, Constantine N.. "Representation of Parties in Arbitration by Non-Attorneys. Fordham Urban Law Journal. Spring, 1885, 22: pp. 503-556.
Article examines the representation of clients by non-attorneys in mediation. Author describes the problems that have arisen as ADR has become more popular, especially in the area of civil litigation. Author presents an introduction to the Securities Industry Conference on Arbitration, which created a code for self-regulatory organizations. The report follows the article.
ARB: SELECTION OF ARBITRATOR/ ARB: TRAINING AND QUALIFICATIONS OF ARBITRATOR.

Katsoris, Constantine N.. "SICA: The First Twenty Years." Fordham Urban Law Journal. 1996, 23(3): pp. 483-566.
Article addresses the issue of securities arbitration and presents a broad overview. The article includes an exploration of judicial developments that have channeled security disputes into arbitration. The article examines the establishment and impact of the Securities Industry Conference on Arbitration (SICA) over the past twenty years, the participation of self-regulatory organizations (SROs) in the arbitration process, the oversight role of the SEC and the alternative forum presented by the American Arbitration Association (AAA).

SUBJ MATTER: SECURITIES.

Katz, Marsha and Helen LaVan. "Outcomes of unionization issues in public sector arbitration cases: a model". Journal of Collective Negotiations in the Public Sector; Spring, 1995; 24(2): pp. 133-145.
Article develops a prediction model by analyzing over 1,300 arbitrated cases. The model enables prediction of case outcomes based on the existence of individual rights and unionization-related issues. Article examines issues such as bargaining rights, contract arbitration, grievances, bargaining unit determinations, and seniority provisions.
SUBJ MATTER: GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Katz, Avery. "When should an offer stick? The economics of promissory estopple in preliminary negotiations." Yale Law Journal. March 1996, 105(5): pp. 1249-1309.
Article examines the doctrine of promissory estopple as it applies in the context of preliminary negotiations with the purpose of developing a better understanding of the regulatory role of contract formation. Author argues that estopple and related legal doctrines shape the bargaining process by influencing the negotiators' incentives to make and rely on preliminary communications. In addition, author proposes that a regulatory approach to contract formation with mandatory rules could be a new, effective and efficient approach to contract formation.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL.

Kaufman, Stephen A.. "Issues in international sports arbitration". Boston University International Law Journal; Fall, 1995; 13: pp. 527-550.
Article discusses several key issues regarding international sports arbitration, including whether the Court of Arbitration for Sport ("CAS") is a sufficiently independent and impartial tribunal, whether monetary awards by the CAS are enforceable in various domestic courts around the world, and whether the involuntary mandatory arbitration clauses in the by-laws and regulations of various national governing bodies for sporting events are voidable. Author contends that the recent information of the CAS lends credibility to the argument that it is indeed a neutral decisionmaker. Further, the author believes that domestic courts can recognize and enforce CAS awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in New York. Finally, the author concludes that the mandatory nature of arbititration clauses presents a dilemma for the CAS because if such agreements are determined to be invalid by domestic courts, the courts will be unlikely to enforce the CAS awards under the New York Convention.

ARB: BINDING ARB- GENERAL.

Kaye, Judith S.. "An opening statement". Albany Law Review; Spring, 1996; 59(3): pp. 835-845.
Keynote address introducing a symposium on business dispute resolution. The speaker, Chief Judge of the State of New York and Chief Judge of the Court of Appeals of the State of New York, traces the growth of alternative dispute resolution (ADR) and discusses dispute resolution problems created by the explosion of ADR, including new ADR choices faced by lawyers and clients, procedural and constitutional questions faced by administrators of court-annexed programs and substantive law questions faced by judges. Article concludes with a question and answer discussion between the audience and the speaker.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ COURT REFORM/ SUBJ MATTER: CORPORATE.

Kenaghy, Robert T.. "Whirlpool's search for efficient and effective dispute resolutions". Albany Law Review; Spring, 1996; 59(3): pp. 895-904.
Article discusses Whirlpool Corporation's use of alternative dispute resolution (ADR) mechanisms to resolve product claims and commercial disputes. Author, a member of Whirlpool's in-house legal counsel, describes an agreement between Whirlpool and State Farm insurance company in which all of State Farm's subrogation claims against Whirlpool were removed from the judicial system and resolved through a private ADR system of negotiation, nonbinding mediation and binding arbitration. Author also describes Whirlpool's attempts to resolve commercial disputes through pre-litigation negotiation involving two stages: first, Whirlpool's lawyers meet with the other company's mid-level management; then, if a solution has not been reached, a meeting between top executives of both companies is arranges. Author reports that Whirlpool's use of ADR has resulted in cost savings, increased productivity and greater predictability in the resolution of legal issues.
SUBJ MATTER: CORPORATE/ ECONOMIC ADVANTAGES OF ADR.

Kennedy, Desiree A.. "Predisposed with integrity: the elusive quest for justice in tripartite arbitrations". Georgetown Journal of Legal Ethics; Summer, 1995; 8(4): pp. 749-790.
Article examines the benefits and detriments of tripartite arbitrations wherein two of the three arbitrators are appointed directly by the parties. Author challenges the absence of ethical standards imposed on these non-netural arbitrators as inconsistent with the societal goals of unbiased, impartial decision making. Author examines both internal and external standards of procedure and ethics applied to party-nominated arbitrators and

concludes that they are ineffective in addressing arbitrator bias. Article closes by proposing more stringent ethical rules for party appointed arbitrators.
ETHICS: GENERAL/ QUALITY CONTROL.

Killingsworth, Patricia M.. "Winning" redefined: A positive approach to the practice of law. Georgia State University Law Review. April, 1996, 12(3): pp. 653-65.
Article suggests that "winning" in the legal sense should be redefined to not only include winning the case, but should also stress communication and compromise. Author states that communication and flexibility would be beneficial to clients over time because client's full range of needs would be addressed. Article explores these ideas in the areas of domestic relations, construction law, contracts, torts, and workers' compensation and determines that encouraging communication and flexibility in every case would result in less litigation and a higher degree of satisfaction with the profession.
INST NATURE: JUSTICE SYSTEM- FAMILY COURTS.

Kirtley, Alan "The mediation privilege's transition from theory to implementation: designing a mediation privilege standard to protect mediation participants, the process and the public interest.". Journal of Dispute Resolution; Spring,1995: pp. 1-53.
Article analyzes the developing law of mediation privilege of confidentiality. Article begins by examining the function of confidentiality in mediation proceedings, and then analyzes the policy considerations underlying evidentiary privileges. Finally, author offers a critique of new mediation privilege statutes and rules. The state of Washington's mediation statute serves as a comparable benchmark throughout.
CONFIDENTIALITY/ ETHICS: GENERAL.

Klein, Justin -Speaker. "Non-attorney representation" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of December 5, 1994). Fordham Law Review. April, 1995, 63(5): pp. 1605-1611.
Article is transcript of the single-member panel discussion on non-attorney client representation in the Securities industry's arbitration procedures. The issue of whether these non-attorneys have adequately represented clients, given the many complaints received in this area. He discusses the unorthodox approach of the Securities Industry Conference on Arbitration (SICA) in holding open hearings before formulating a regulation. He reports that two opposing views were presented. The non-attorneys argued for free access to the system, saying that many of them are qualified because they are former members of the industry, these proceedings are not a court

of law and they are less expensive than attorneys. The attorneys argued that although not a court of law, legal issues are discussed, that there is no regulation of non-attorneys, there is no attorney-client privilege and no malpractice insurance. Also, many of the people involved in this types of businesses are former Securities violators. SICA currently leaves issue to local bar associations to decide.
SUBJ MATTER: SECURITIES.

Klintworth, Tim K.. "The Enforceability of an Agreement to Submit to a Non-Arbitral Form of Dispute Resolution: The Rise of Mediation and Neutral Fact-Finding". Journal of Dispute Resolution; Spring, 1995; 1: pp. 181-95.
This note focuses on the enforceability of agreements to submit to some form of non-arbitral dispute resolution such as mediation or neutral fact-finding. The author argues that as more agreements to arbitrate future disputes are enforced, other non-arbitral forms of dispute resolution have been incorporated into contracts and are similarly being enforced. The author analyzes several state court decisions that illustrate that non-arbitral dispute resolution should be fully enforceable so long as they do not violate policy.
MED: RELATED PROCESSES-GENERAL.

Koch, Cora S. "ERISA control groups: the creeping spread of liability." Labor Law Journal. March, 1995, 46(3): pp. 142-52.
Article analyzes increasing employer withdrawal liability through control groups. Author examines ERISA by reviewing recent case law involving the concept of expanded liability. She asserts that the courts have expanded liability by eroding the original control group doctrine.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Kolakowski, William F.. "Note, The Federal Arbitration Act and individual employment contracts: a better means to an equally just end." Michigan Law Review. June, 1995, 93(7): pp. 2171-2191.
Article argues in favor of a narrow construction of a section of the Federal Arbitration Act (FAA) that excepts from enforcement arbitral provisions in individual employment contracts of "seamen, railroad employees, or any class of workers engaged in foreign or interstate commerce." Author examines the legislative history of the exception, demonstrating that no firm conclusions can be drawn regarding congressional intent concerning the exception's scope. Author concludes that a narrow reading of the exception, allowing for enforcement of arbitral provisions in some types of individual employment contracts, best effectuates the purposes and positive

benefits of the FAA and gives courts a compelling justification to construe the FAA provision narrowly.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: MARITIME.

Komuro, Norio. "The WTO dispute settlement mechanism: coverage and proceudres of the WTO understanding". Journal of World Trade; August, 1995; 29(4): pp. 5-95.
Article describes the Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO Understanding) annexed to the World Trade Organization. Author explains the coverage and the procedure of the WTO dispute settlement mechanism. Implications and downfalls of the procedures are presented and a comparison between the pre-WTO dispute settlement regimes to the WTO procedures is given. An appendix which lists cases that have either adopted or rejected the Panel report is provided at the end of the article.
SUBJ MATTER: INT'L/ SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD.

Koromoske, Frances E.. "Guiding your client through the lending maze." The Practical Lawyer. April, 1995, 41(3): p 11.
Article is a check list of things to look for when seeking contractual protection in lending. The form was produced by the author in response to the use of old forms by lenders, arising out of lender liability litigation and which can have devastating effects on the borrower.
SUBJ MATTER: CONSUMER.

Kovach, Kimberlee K.. "Mediation for mediators? If you talk the talk, you'd better walk the walk: an examination of how dispute resolvers resolve disputes". Ohio State Journal on Dispute Resolution; Spring, 1996; 11(2): pp. 403-440.
Article discusses difficulties experienced by dispute resolution professionals in resolving their own disputes. Author draws on personal experience and other research in examination of how the people who advocate and implement ADR mechanisms resolve their own disputes.
ROLE OF LAWYERS.

Krieger, Stefan H.. "Problems For Captive Ratepayers in Nonunanimous Settlements of Public Utility Rate Cases" Yale Journal on Regulation. Summer, 1995, 12: pp. 257-434.
Article describes the increasing tendency of public utility commissions to approve nonunanimous settlement of rate cases. Author examines such nonunanimous settlements, and the risks that accompany them. Author argues that ratepayers, especially residential and low-income ones, will bear

too much of the cost. Author argues that unanimous settlement is necessary to protect these groups.
SUBJ MATTER: PUBLIC UTILITIES.

Krislov, Joseph. "The consent award in labor arbitration: where and why?". Labor Law Journal; November, 1995; 46(11): pp. 685-91.
Article explores various types of arbitration and awards to determine where and why consent awards are likely to be granted. Author notes that a number of factors determine whether a consent award is appropriate. Author supports arbitrators' replacing consent awards with "stipulated" awards to remove any appearance of deception.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/
SUBJ MATTER: LABOR-GENERAL.

Kujiper, Pieter Jan. "The new WTO dispute settlement system; the impact on the European community." Journal of World Trade. December, 1995, 29: pp. 49-71.
Article gives tentative outline of the impact of the new WTO dispute settlement system upon the European Community. This analysis includes an analysis of GATT agreements and how these have been and will be treated by courts in the EC countries. Further, the author urges countries to maintain the doctrine of exhaustion of local remedies in order to vindicate the goals of the new WTO system, as well as the goals of international arbitration generally.
SUBJ MATTER: INT'L.

Kupersmith, Karen. "A perspective on the role of the arbitrator in securities arbitration". (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 297-308.
Arbitration has become the favored means for resolving securities-related disputes. Author provides a practical viewpoint on the arbitrator's role in securities arbitration, describing the arbitrator selection process, disclosure requirements, training, avoidance of impropriety, and what parties should expect from their arbitrator.
SUBJ MATTER: SECURITIES.

Kurth, Mette H.. "An unstoppable mandate and an immovable policy: the Arbitration Act and the Bankruptcy Code collide." UCLA Law Review. February, 1996, 43(3): pp. 999-1035.
Article discusses the dilemma that federal courts face when one party to an arbitration agreement seeks to enforce arbitration against a debtor who has filed for protection under the Bankruptcy Code. Author explores the history of the Arbitration Act and the Bankruptcy Code. Author then analyzes how

a number of lower federal courts have dealt with the conflict between the Bankruptcy Code and the Arbitration Act in the context of requests to stay bankruptcy proceedings and compel arbitration. Finally, author gives recommendations as to how to resolve the conflict between the Bankruptcy Code and the Arbitration Act.
ARB: JUDICIAL REVIEW.

"Labor and the pace of privatization." Middle East Executive Reports; May, 1995; 18(5): pp. 10-13.
Article provides an overview of the impact of privatization on organized labor in Egypt and the effect of a proposed new labor law designed to bring the work force more in line with privatization. Author outlines the proposed labor law, including significant changes in the areas of hiring and firing, the right to strike and the right to collective bargaining. Author also notes that current procedures for resolving labor-management disputes, including limited arbitration procedures, are inadequate.
SUBJ MATTER: INT'L/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Lando, Ole. "Assessing the role of the UNIDROIT Principles in the harmonization of arbitration law". Tulane Journal of International and Comparative Law; Spring, 1995; 3(1-2): pp. 93-128.
Article addresses the effect that the UNIDROIT principles for International Commercial Contracts ("Principles") has upon international arbitrations. Author discusses the application of the Principles as a part of lex merca toria, and examines how arbitrators may choose the applicable rules of law. Article closes by evaluating how parties and arbitrators should apply lex merca toria in place of national laws.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L.

Langford, Philip A.. "Alabama Supreme Court contravenes the policy of the Federal Arbitration Act". Alabama Law Review; Winter, 1996; 47(2): pp. 615-643.
Article examines Alabama Supreme Court ruling that narrowly construed an arbitration agreement. Author discusses that such a holding is contrary to the public policy embodied in the FAA and U.S. Supreme Court rulings that liberally construe arbitration clauses. Author concludes that the Alabama Supreme Court should reconsider its decision in a manner more consistent with the policies of the FAA.
SUBJ MATTER: GENERAL/ ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Laturno, Camille A.. "International arbitration of the creative: a look at the World Intellectual Property Organization's new arbitration rules." The Transportation Lawyer. SPRING, 1996, 9: pp. 357-391.
Comment analyzes the use and application of the World Intellectual Property Organization (WIPO) Arbitration Rules to settle property disputes. Author discusses the problems involved with existing dispute resolution mechanisms available for resolving intellectual property matters, compares WIPO with other arbitration institutions and methods, and discusses the reasons and justifications for arbitrating under WIPO's rules. Comment also mentions potential arbitrability issues a private party may encounter upon arbitrating a dispute with a nation or its instrumentality, as opposed to a private party.
SUBJ MATTER: INT'L/ ARB: BINDING ARB- GENERAL.

Leigh, Jane. "Mediation --the Law Society line." Family Law. May 1996, 26: pp. 309-311.
Author provides overview of Family Law bill that mandates attendance to meetings that serve as an explanation of mediation. Author explains mode of payment of mediator and lack of regulations governing mediators. Author describes the Law Society's position on the bill and states that the Law Society working on issues such as: negotiating qualification standards for being mediators in pilot programs, negotiating practice management standards, and negotiating payment methods for pilot programs.
MED: RELATED PURPOSES- THEORY AND STRATEGIES.

Leirer, Wolfgang W.. "Rules of Origin Under the Caribbean Basin Initiative and the ACP-EEC Lome IV Convention and their Compatibility with the GATT Uruguay Round Agreement on Rules of Origin" (Central America, European Community). University of Pennsylvania Journal of International Business Law; Fall, 1995; 16(3): pp. 483-526.
Article compares how rules of origin to ascertain preferential tariff eligibility operate under the Caribbean Basin Initiative and the ACP-EEC Lome IV Convention to determine whether these preferential rules of origin meet the three elements under the "clearly defined" requirement of the GATT Rules of Origin Agreement. Author determines that the Lome IV Convention, although complex in its detailed product-specific approach, is "clearly defined." Author finds, however, that inconsistent application by US Customs and courts of the current "substantial transformation" test under the Caribbean Basic Economic Recovery Act renders the Act not "clearly defined" and causes confusion among importers, higher duties and fewer imports. Author believes that the US must change its rule of origin to comply with the GATT and suggests a combination of the two rules of origin--the change in tariff classification test and the specific product rules of origin--used by the Lome IV Convention.

SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L.

Lew, Ginger & Jean Heilman Grier. "A role for governments in the resolution of international private commercial disputes" (The Role of International Law in the Twenty-First Century). Fordham International Law Journal; May, 1995; 18(5): pp. 1720-1724.
Article addresses dispute resolution mechanisms of North American Free Trade Agreement (NAFTA) and suggests that provisions mark the beginning of an era where ADR is used for resolving international private commercial disputes. Author argues that NAFTA may set the stage for new partnerships between government and the private sector in facilitating the resolution of international commercial disputes, and article provides two examples to support this conclusion. Author concludes by stating that end result of using ADR in international commercial disputes may ultimately increase international business.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L.

Lewis, John B. and Lois J. Cole. "Defamation actions arising from arbitration and related dispute resolution procedures- preemption, collateral estoppel and privilege: why the absolute privilege should be expanded." DePaul Law Review. 1996-Spring, 45 3: pp. 677-728.
The article discusses the emergence of defamation actions brought by participants who are dissatisfied with the outcome of their arbitrations. The authors argue that alternative dispute resolution procedures need equal protection as is granted to court proceedings. Author provides an overview of the inadequacies of federal preemption, collateral estoppel, and qualified privilege and suggest the institution of an absolute privilege to remedy the conflict.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Lewton, Robert J.. "Are mandatory, binding arbitration requirements a viable solution for employers seeking to avoid litigating statutory employment discrimination claims?" Albany Law Review; SPRING, 1996; 59(3): pp. 991-1033.
Article outlines the Federal Arbitration Act, discusses the Supreme Court's decision in Gilmer v. Interstate/Johnson Lane Corporation, and the advantages and disadvantages to employers of mandatory, binding arbitration requirements. Author concludes that employers can realize many of the benefits of such arbitration by requiring employees to agree to voluntary or nonbinding arbitration before litigating statutory, employment discrimination claims.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-DISCRIMINATION/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Li, Jeffrey C.Y.. "Strategic negotiation in the greater Chinese economic area: a new American perspective". Albany Law Review; SPRING, 1996; 59(3): pp. 1035-81.
Article reviews competitive and cooperative negotiation theory, focusing on the skills and strategies, both offensive and defensive, that are involved in successfully negotiating with the Chinese. Quoting from classical Chinese writings, author advises the American negotiator to know both his own and his opponent's goals, assumptions, strategy and capabilities in order to succeed in the growing East Asian market.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: INT'L/ COMPARISONS: CROSS-CULTURAL.

Lisnek, Paul M. "Position testing" (Negotiated Salary and Benefits, part 3). The Wisconsin Lawyer. November, 1995, 68(11): pp. 58-59.
Article analyzes two levels of communication essential to understanding the process of negotiating salary and benefits. Author explains that skilled negotiators need to be aware of both the drives and behaviors of those with whom they negotiate. Author concludes that by identifying the parties' needs and the behavior generated by those needs, negotiators can more readily resolve parties' differences.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Litvak, Uri. "Regional integration and the dispute resolution system of the World Trade Organization after the Uruguay Round: a proposal for the future." University of Miami Inter-American Law Review. Spring-Summer, 1995, 26(3): pp. 561-610.
Article discusses the world trade system as affected by the Uruguay Round of negotiations under the General Agreements on Tariffs and Trade. Author proposes that the world trading system must have a means of accommodating regional economic integration schemes within the multinational framework, even though the two system appear to be contradictory. Author traces the historical development of the GATT/World Trade Organization legal system and proposes a model of conflict management for the future that will better adapt to global regionalism, using the relationship between North American Free Trade Agreement nations and the European Union as a model for the proposed theoretical framework.
SUBJ MATTER: COMMERCIAL.

Liu, Ge and Alexander Lourie. "International commercial arbitration in China: History, new developments, and current practice" (China on the

horizon: exploring current legal issues). John Marshall Law Review. Spring, 1995, 28(3): pp. 539-66.
Article examines the history of international arbitration in the People's Republic of China. Article concisely notes several recent developments of arbitration in China, highlighting the Chinese government's legislative efforts to facilitate the growing practice of arbitration. The author concludes that the advances made toward modernizing the arbitration process in China has been beneficial to foreign and Chinese business.
SUBJ MATTER: INT'L.

Lloyd-Bostock, Sally. "Alternative dispute resolution and civil justice reform: is ADR being used to paper over cracks?" (response to article by Jack B. Weinstein in this issue, p. 241). Ohio State Journal on Dispute Resolution; Spring, 1996; 11(2): pp. 397-402. Article discusses Judge Weinstein's article which questions how ADR does and should relate to reform of the civil justice system, and whether ADR techniques are being adopted as a means of avoiding necessary reform. The author uses the development of ADR in the U.S. as a model for examining the legal system of England.
COMPARISONS: CROSS-CULTURAL/ QUALITY CONTROL.

Loeschen, John M. and Paul Lansing. "A solution to the prospective enforcement of prior arbitration awards based upon the prospective injunction model." Ohio State Journal on Dispute Resolution. 1996, Winter, 11: pp. 41-79.
Authors propose a practical and uniform standard to be used by the federal courts in determining whether a particular cause of action warrants prospective enforcement. This is done by analyzing U.S. Supreme Court cases such as the Steelworkers' Trilogy and examining numerous tests developed by federal circuit courts. The authors fell that prospective enforcement of a prior arbitration award should be employed in limited contexts, but that the standards developed in the article sufficiently cover those contexts.
SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD.

Logan, Alastair. "Lawyer-mediators and supervision-- the balm view." Family Law. May 1996, 26: pp. 311-312.
Author contends that beginning mediators should no adopt a co-mediation model based on the mental health field's view of supervision. Author states that professional culture of attorneys and the professional culture of mental health field are completely different; therefore, author urges lawyer-mediators to adopt a consultation model in which a mediator consults a more experienced mediator outside of the actual mediation session.
MED: RELATED PURPOSES- THEORY AND STRATEGIES.

Lowenfeld, Andreas F.. "The party-appointed arbitrator in international controversies: some reflections" (Symposium on International Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 71-88.
Article addresses the role of the party-appointed arbitrator and how the parties should address the other party's appointed arbitrator. Author believes that it is not a pointless task to convince the other party's appointed arbitrator of the merits of your case. Author concludes that party-appointed arbitrators are useful in offering a cross-cultural prospective that may not be gained otherwise.
SUBJ MATTER: INT'L.

Lukas, Martin. "The role of private parties in the enforcement of the Uruguay Round Agreements". Journal of World Trade; October, 1995; 29: pp. 181-206.
Article discusses the present and future forms of participation of private parties in the enforcement of international trade law set forth in the Uruguay Round Agreement. Author presents a description of the World Trade Organization and its decision-making process, with concentration on the dispute settlement mechanism. Author also provides an overview of the forms of participation of private parties in the World Trade Organization and in domestic procedures to enforce the rules in the Uruguay Round Agreement and discusses the future of private participation in the enforcement of those agreements.
SUBJ MATTER: INT'L.

Lynch, Michael. "Mediation procedures." Journal of Accountancy. January, 1996, 181(1): pg. 39.
The article addresses the IRS Announcement 95-86 of IRS Bulletin 1995-44 which discusses a one-year test allowing taxpayers or appeals courts to request mediation. The plan states that the mediation must be conducted by an objective third party with no authority to impose a decision. Furthermore, the mediation is to be nonbinding, but the primary goal of the mediation is to reach an agreement. The article provides further explanations of other details involving the one-year trial period for the plan laid out in the IRS Announcement.
MED: PUBLIC POLICY DIALOGUE/ SUBJ MATTER: TAX.

MacLean, Lois and John McNiven. "The Complaint Resolution Project" Alberta Law Review. October, 1995, 34(1): pp. 54-68.
Article describes an experimental complaint resolution process that attempts to informally resolve some of the client/lawyer and lawyer/lawyer complaints filed with the Law Society of Alberta. The new process utilizes

a hybrid of arbitration and mediation in which the complaint officer inserts himself or herself between the parties and attempts to assist them in reaching a settlement. While definitive statistical analysis has not been completed for the experiment, the authors conclude that in many cases, the new process has been successfully utilized to reduce the time and complexity of the complaint process for both the complainant and the lawyer, and in many cases to assist the parties to reach a satisfactory resolution of the dispute.
MED: RELATED PROCESSES-GENERAL/ ARB: BINDING ARB-GENERAL.

Macturk, Christopher H.. "Confidentiality in mediation: the best protection has exceptions". American Journal of Trial Advocacy; Fall, 1995; 19: pp. 411-434.
Article addresses confidentiality and its possible exceptions in the context of mediation, dealing primarily with the use of the confidentiality privilege as a means of shutting out highly probative evidence in subsequent litigation. Author outlines the importance of confidentiality in the mediation process, and discusses how without some limited exceptions to the privilege, the process itself is subject to abuse and the incentive to mediate disputes is reduced. The author concludes that while the general confidentiality privilege is an integral aspect of mediation that should be closely guarded, some exceptions are necessary in order to ensure that the process is fair.
MED: RELATED PROCESSES-GENERAL.

Makofasky, Abraham. "Solidarity forever: retired public employees and their union". Journal of Collective Negotiations in the Public Sector; Spring, 1995; 24(2): pp. 173-191.
Articles studies the influence of policies and practices of a public union in long term and recent members of a retiree chapter. Theoretical perspectives are offered on why people join unions, on African American workers' participation in unions, and on class conflict among American workers. Article concludes by highlighting the positive impact of the union's agenda while noting the legacy of institutional racism.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Malin, Martin H.. "Symposium: Current Critical Issues in Labor and Employment Law: Arbitrating Statutory Employment Claims in the Aftermath of Gilmer." Saint Louis Law Journal. 1996, 40(1): pp. 77-106.
Article discusses ramifications of the Supreme Court's decision in Gilmer. The article explores the Court's holding as it applies to the Court's evolving attitude toward arbitration. The second half of the article reviews lower

court interpretations of Gilmer and reveals their disposition on issues of arbitration. Critical of the Federal Arbitration Act (FAA), the article suggests that arbitration awards should be subject to de novo review.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Marceau, Gabrielle. "Transition from GATT to WTO: a most pragmatic operation". Journal of World Trade; August, 1995; 29(4): pp. 147-163.
Author analyzes the conflicts in the procedures between the GATT 1947 and the WTO Agreement. By looking to the Vienna Convention, the interpretation for both of these agreements as coexisting is posssed. The different provisions under the agreement relating to the Tokyo Round Codes is analyzed. Author suggests that the transition from GATT 1947 to WTO is a comprehensive procedure which allows public international attorneys to gain insight into the pragmatic effects of such a transition.
MED: RELATED PROCESSES-GENERAL/ COMPARISONS: CROSS-CULTURAL/ SUBJ MATTER: INT'L.

Mariani, Ramona. "Labor law - post-expiration arbitrability under collective bargaining agreements in the Third Circuit" (Issues in the Third Circuit) (Case Note). Villanova Law Review; May, 1995; 40(3): pp. 957-984.
Article reviews case law concerning whether and when a duty to arbitrate survives an expired collective bargaining agreement. Author concentrates on the Third Circuit's unique approach which applies implied-in-fact contract theory before applying a review on the merits of the underlying claim. She suggests that the Third Circuit's approach is preferable because it is relatively clear and straight-forward when compared to that of other Circuits.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Marmo, Michael and Susan Marmo. "Behind school doors: the arbitration of sexual misconduct cases involving school employees and students". Journal of Collective Negotiations in the Public Sector; Fall, 1995; 24(4): pp. 301-323.
Article examines twenty-five cases in which school employees who were disciplined for sexual misconduct involving a student appealed their cases to arbitrators. Authors analyze arbitrator techniques in such Journal of Collective Negases, including standard of proof requirements, evaluation of testimony and evidence and imposition of penalties. Authors report that although instances of alleged sexual misconduct between school employees and students are viewed as extremely serious offenses by employers and

usually result in discharge, arbitrators will often reduce the penalty for reasons such as the severity of the offense, age of the student and the employee's prior work performance.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: EDUCATION.

Mars, Harvey S.. "Employee welfare benefit entitlement and Title I of the Americans with Disabilities Act". Labor Law Journal; May, 1995; 46(5): pp. 273-285.
Article addresses the debate over whether Title I of the Americans with Disabilities Act (ADA) provides the statutory basis for employees to challenge changes made by their employer to existing health care insurance plans or whether the ADA does not limit an employer's right to modify existing plans but rather that any limitation stems from the Employee Retirement Income Security Act (ERISA). Author tests these positions in the context of two recent cases and posits that the debate is in need of judicial resolution. Article concludes by proposing alternatives such as negotiated employment contract provisions as to when entitlements become vested, amending the ADA or ERISA and the concept of a national health care insurance plan.
LEGISLATION/ SUBJ MATTER: LABOR-GENERAL.

Marshall, Mary A. and Linda C. Reif. "The ombudsman: maladministration and alternative dispute resolution". Alberta Law Review; October, 1995; 34(1): pp. 215-239.
Article examines the use of the ombudsman as a form of ADR. The "classical legislative ombudsman" is defined and discussed. Additionally, the article identifies challenges facing the classical ombudsman and the different forms of the ombudsman, as adapted around the world. The article concludes by setting forth the similarities found in all ombudsman models.
INST NATURE: GENERAL/ OMBUDSPERSON.

Martin, Jessica T.. "Judicial review of commercial arbitration awards: when does a remedy "exceed" arbitral powers"? Hastings Law Journal; August, 1995; 46(6): pp. 1907-1938.
Article presents the advantages of arbitration agreements, but suggests that Advanced Micro Devices v. Intel Corp. illustrates the discontent with arbitral remedies. The remedial purposes and the basic parameters of arbitral authority are presented. Author advocates a broad interpretation of arbitral remedial power while providing several explanations for such an interpretation. A comparison between arbitral power and judical remedies is also given.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ COURT REFORM.

Masithela, Mohale S.. "Environmental diplomacy: negotiating more effective global agreements" (book review). New York University Journal of International Law and Politics. Spring, 1995, 27(3): pp. 705-708.
Article reviews Lawrence E. Susskind's 1994 text. Author finds that the work offers a comprehensive evaluation of international treaty making and proposes instructive suggestions for reforming the inadequacies of the process. Author notes that the book addresses procedural and structural shortcomings and proposes an approach in which nations meet and argue to take a general course of action to combat identified environmental threats and to better distribute environmental costs and benefits to the party-states involved.
TYPE OF SOURCE: BOOK REVIEW/ SUBJ MATTER: ENVIRONMENT.

Masucci, Deborah. "Securities arbitration - a success story: what does the future hold?" (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 183-202.
Author reviews dispute resolution in the securities industry, concentrating on the adoption of the National Association of Securities Dealers Code of Arbitration Procedure, its objectives and the effect of recent U.S. Supreme Court decisions on securities arbitration. Author describes the major benefits of such industry-sponsored arbitration, emphasizing public availability, the regulatory framework, heightened efficiency, and lower costs.
SUBJ MATTER: SECURITIES/ ECONOMIC ADVANTAGES OF ADR.

Matheson, Cameron S.. "Federal Arbitration Act: Employees not bound by agreements to arbitrate statutory employment claims unless they knowingly contract to forgo their statutory remedies." Boston College Law Review (1994-1995 Annual Survey of Labor and Employment Law). March 1996, 37(2): pp. 431-439.
Congress enacted the Federal Arbitration Act (FAA) to both reverse the longstanding judicial hostility to arbitration agreements and to place arbitration agreements on equal footing with other contracts. The Supreme Court has interpreted various provisions of the FAA as manifesting Congress' intent to favor arbitration agreements. However, Title VII provides for consideration of employment discrimination claims in several forums and generally submission to one forum does not preclude subsequent submission to another. Article addresses the conflict between the FAA and Title VII: whether compelling arbitration of a particular Title VII claim is consistent with Congress' policy against employment discrimination.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB.

Matthews, Kathleen. "IRS streamlining controversy resolution process, official says." Tax Notes. February 12, 1996, 70(7): p. 810.
Article summarizes the remarks of Michael Danilack, IRS Chief Counsel (International), who spoke at a seminar on transfer pricing and legislative developments sponsored by the Washington, D.C. region of the U.S. branch of the International Fiscal Association (IFA). Author relates that Danilack said that the offices of the Assistant Commissioner (International) and the Associate Chief Counsel (International) are continuing efforts to streamline the tax controversy resolution process. Author also discusses Danilack's remarks regarding whether a taxpayer can get relief from the section 6662(e) penalty under the competent authority process.
SUBJ MATTER: TAX.

Maull, John. "ADR in the federal courts: would uniformity be better?". Duquesne Law Review; Winter, 1996; 34: pp. 245-275.
Article reviews the diversity of ADR mechanism within the various federal courts, focusing primarily on the question of whether or not Congress should ultimately require uniformity of ADR processes throughout the federal system. Author addresses various policy issues concerning the possible uniform use of ADR in the federal system, including indigent access and forum shopping. The author concludes that while Congress should remain active in establishing federal ADR policy, the final authority and discretion regarding what ADR programs are implemented, and how they are used, should most likely remain with the district courts.
COURT REFORM.

McCaffrey, Stephen C.. "The International Law Commission adopts draft articles on internation water courses." American Journal of International Law. April, 1995, 89(5): pp. 395-404.
Article discusses the adoption of the draft articles on the law of non-navigational uses of international watercourses and a resolution on transboundary confined ground water. Author outline the changes embodied in the "second reading" in 1994 to the adopted articles of 1991. The author concludes that these changes represent a legal milestone as this enhancement strengthens the rule of law in international relations and the protection and preservation of international watercourses.
SUBJ MATTER: INT'L.

McCallum, Robert C. and Greg McCarry. "Worker Privacy in Australia" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law Journal; Fall, 1995; 17(1): pp. 13-37.

Article describes the lack of a general common law right of privacy and the resulting piecemeal legislation that regulates worker privacy in Australia. Authors reveal how awards of labour tribunals often regulate entire industries and currently govern employment terms of 80% of the work force. Authors relate that tribunals decide many cases against a common law backdrop of the employer's implied obligation not to act in a manner likely to destroy trust and confidence between employer and employee. Authors review the Privacy Act of 1988 and the manner in which many other statutes indirectly regulate privacy in areas such as worker conduct, collection and use of personnel data, and investigation of workers. Authors conclude that, absent comprehensive legislation, worker and union agitation will pressure labour tribunals to play a more significant role in the protection of worker privacy.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

McCarthy, Peter and Janet Walker. "Involvement of lawyers in the mediation process." Family Law. March 1996, 26: pp. 154-158.
Article contains the results of a survey of mediators trained by the Family Mediators Association. Survey sought to determine the role of lawyers in the mediation process in terms of: (1) attending mediation with their clients; (2) providing independent legal advice to clients who use mediation; and (3) practicing as mediators. Survey concludes that lawyers are an essential component of mediation.
MED: IND ATTY REVIEW.

McCoy, Thomas R.. "The sophisticated consumer's guide to alternative dispute resolution techniques: what you should expect (or demand) from ADR services" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 975-993.
Article surveys the landscape of ADR techniques and vocabulary. Author focuses on mediation and its variations, outlining the steps a mediator must take prior to mediation. Article discusses the traits and methodology of a successful mediator. Author also notes the many impediments to resolution through mediation, even where such resolution would benefit both parties.
MED: RELATED PROCESSES-GENERAL.

McCoy, Timothy J., and Brian L. Fielkow. "Paid in full: undercharge claims & the Negotiated Rates Act." The Wisconsin Lawyer. November, 1995, 68(11): pp. 20-23, 66.
Article explores the background of the Negotiated Rates Act and examines the options the Act provides to shippers who are subject to "undercharge" claims brought by carriers who have been forced into bankruptcy. Authors

summarize the entities that are covered by the Act, the settlement procedure, and the Act's possible conflict with the Bankruptcy Code. Authors note that bankrupt carriers often demand payment from shippers even when such claims are invalid or are subject to the settlement provisions of the Act. Authors note the emerging majority view that the Act does not violate the Bankruptcy Code, and they suggest that lawyers representing clients who receive such demands should refer to the Act before advising their clients.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ LEGISLATION.

McDonnell, Neil E.. "Obtaining arbitral awards under the Inter-American Convention." (Inter-American Convention for International Commercial Arbitration). Dispute Resolution Journal. January, 1995, 50(1): pp. 19 - 23.
Article examines the Second Circuit's recent opinion in Productos Mercantiles e Industriales, S. A. v. Faberge USA, Inc., 23 F.3d 41 (1994). The opinion sheds light on the scope and application of the Inter-American Convention for International Commercial Arbitration as well as the New York Convention. It also clarifies procedures for enforcement of arbitral awards against non-parties. The author concludes that the decision affirms that the Inter-American Convention, like the New York Convention, will be interpreted liberally to promote and facititate effective arbitration.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: INT'L.

McElhaney, James W. "Advocacy in other forums: litigators must adapt to new dispute resolution settings." ABA Journal. February, 1995, 81: pp. 22-23.
Author sets out techniques and suggestions that may be helpful when participating in a variety of dispute resolution settings. Article provides procedural, as well as substantive, tips for success in mediations and arbitrations. Author sets out the differences between trials and a variety of methods of alternative dispute resolution.

McEwen, Craig A. et al.. "Bring in the lawyers: challenging the dominant approaches to ensuring fairness in divorce mediation." Minnesota Law Review. June, 1995, 79(6): pp. 1317-1411.
Article reviews in depth the debate about fairness in divorce mediation, examines the merits and weaknesses of the two primary contending approaches in mediation statutes (the "regulatory and "voluntary participation" approaches), identifies the four "myths" that confine the debate to the two dominant approaches, and examines the perceptions and experiences of Maine divorce lawyers since the implementation of the "lawyer-participant" approach to divorce mediation. Authors argue that

concerns for fairness in divorce mediation no longer justify heavy court regulation or confining mediation to voluntary parties, contending that bringing lawyers into mandatory mediation will ease fairness concerns and allow greater opportunities for the expression when discussing matters of utmost concern, like custody. Authors conclude that the "voluntary participation" and "regulatory" approaches to divorce mediation are costly, ineffective, and flawed; advocating in their stead, a "lawyer-participant" approach modeled after the Maine program. (Note: in July 1994,a brief synopsis of this article was published in ABA Dispute Resolution Magazine).
MED: RELATED PROCESSES-GENERAL.

McKinnis, Scott M.. "Enforcing Arbitration with a Nonsignatory: Equitable Esoppel and Defensive Piercing of the Corporate Veil". Journal of Dispute Resolution; Spring, 1995; 1: pp. 197-211.
This note reviews how courts have refused to stay arbitration simply because they may involve parties not subject to the arbitration agreement. The author describes how courts have developed the doctrine of equitable estoppel as the legal vehicle to compel arbitration in such cases. The author explores the Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc. decision to argue that courts may establish the emerging legal theory of "defensive piercing" as another venue from which to compel commercial arbitration.
SUBJ MATTER: COMMERCIAL

McLaughlin, Joseph T.. "A view from the front lines". (Symposium on Business Dispute Resolution: ADR and Beyond). Albany Law Review; SPRING, 1996; 59(3): pp. 971-76.
Author comments on the need to involve the parties in all phases of the ADR process, how firms can use ADR to save clients money without loss of firm revenue, and how ADR use should be promoted by the legal community.
ECONOMIC ADVANTAGES OF ADR.

McLaughlin, Joseph T.. "Arbitrability: current trends in the United States". Albany Law Review; Spring, 1996; 59(3): pp. 905-940.
Article provides a comprehensive analysis of arbitration trends in the United States. Author discusses arbitration law, including the Federal Arbitration Act, recent United States Supreme Court decisions concerning arbitration, the arbitrability of punitive damages claims and legislative developments. Author focuses on arbitration trends in specific categories, including: employment claims, consumer claims, family law disputes, tort claims, antitrust, bankruptcy and intellectual property. Author concludes that recent Supreme Court rulings favoring arbitration will continue to reduce the

historic suspicion of arbitration agreements and create increased use of arbitration as a means of resolving disputes.
ARB: BINDING ARB- GENERAL.

McMillion, Rhonda. "Growing acceptance for ADR: Clinton orders use by federal agencies, Congress acts to reauthorize law". ABA Journal; May 1996; 82: p. 106.
Concise overview of President Clinton's initiatives to spur the use of ADR mechanisms by federal agencies, the impetus for which is to resolve civil claims brought on behalf of the government and against the government in a more timely and cost-effective manner.
INST NATURE: GOV'T ENTITIES/ LEGISLATION.

Meron, Theodor. "The authority to make treaties in the late Middle Ages." American Journal of International Law. January, 1995, 89(1): pp. 1-20.
Author examines the evolution of the substance and process of international agreements during the late Middle Ages. Author explains the concept of inalienability of sovereignity and the effect of this concept on the creation and validity of medieval treaties. Author also explores the relationship between the laws of contract and agency in the context of international treaties. Finally, the author draws comparisons between the creation and substance of medieval treaties and current treaty practices.
COMPARISONS: HISTORICAL/ SUBJ MATTER: INT'L.

Messite, Peter J.. "Justice Brennan: The Great Conciliator". Trial; October, 1995; 31(10): pp. 91-92.
Article reviews Hunter R. Clark's biography of United States Supreme Court Justice William J. Brennan. After discussing the chief issues covered in the biography, the article argues that the biography's major flaw is that it seems to be a "cut-and-paste" presentation of what others have already written. The article concludes by referring readers to other biographies of Justice Brennan.
TYPE OF SOURCE: BOOK REVIEW.

Metzloff, Thomas B.. "The unrealized potential of malpractice arbitration". (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 203-30.
Author discusses the benefits of arbitration in medical malpractice cases then examines why it has failed to achieve widespread use, citing such reasons as judicial hostility, failure of state statutes designed to encourage arbitration, and lack of hard evidence that arbitration works. Author

explores the future of arbitration in medical malpractice cases and ways to make it more successful.
SUBJ MATTER: MEDICAL MALPRACTICE.

Miller, Christian B.. Clear Sailing for foreign arbitration clauses under COGSA." (Carriage of Goods by Sea Act) (Case Note). Houston Journal of International Law. 1996- Spring, 18(3): pp. 935-56.
Note comprehensively examines the Supreme Court's decision in the Vigmar Seguros y Reaseguros v. M/V Sky Reefer case which gave its approval to foreign forum selection and choice-of-law clauses in bills of lading covered by the COGSA. The author contends that this decision was correct and cautions that the United States courts should be careful before interpreting its domestic legislation in such a manner as to violate international agreements. The article gives an overview of COSGA and the Federal Arbitration Act to determine how this Supreme Court will affect the applicability of these statutes and discusses future implications.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Miller, Christopher S. and Brian D. Poe. "Arbitrating employment claims: the state of the law". Labor Law Journal; April, 1995; 46(5): pp. 205-213.
Article tracks the current law relating to the permissibility and binding effect of an employee's agreement with his or her employer to arbitrate future claims arising under individual civil rights statutes. Authors analyze Gilmer v. Interstate/ Johnson Lane Corp. and find that the Supreme Court intends to construe the Federal Arbitration Act as allowing employment contracts to include compulsory arbitration clauses. Author notes that it appears that Title VII can be subject to compulsory arbitration, but since relatively few employers have begun using such clauses, there has been little judicial review of these clauses.
SUBJ MATTER: CIVIL RIGHTS/ SUBJ MATTER: LABOR-GENERAL/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Miller, Francis. "The adversarial myth". (United Kingdom) New Law Journal; May 19, 1995; 145(6696): pp. 734-736.
Author examines whether adversarial system in English courts stems from concept of natural justice and finds present system is rather the result of the judicial abdication of inquisitorial powers when faced with complex issues of fact. Relating this concept to arbitration, author comments that arbitral tribunal is inquisitorial due to high level of knowledge regarding complex issues of fact. To prevent arbitration from becoming adversarial, author concludes with suggestion that latest draft of Arbitration Bill must make it clear that inquisitorial procedures may be adopted.

ARB: BINDING ARB- GENERAL/ SUBJ MATTER: INT'L/ LEGISLATION.

Mills, Jennifer. "Alternative dispute resolution in international intellectual property disputes." Ohio State Journal on Dispute Resolution. Winter, 1996, 11(1): pp. 227-239.
Article discusses use of ADR in international intellectual property disputes. Author notes that widely diverging views between the nations on the use of intellectual property causes many problems in attempting to establish a uniform system of ADR. Author notes that both GATT and the World Intellectual Property Organization (WIPO) have established ADR procedures and discusses the potential conflict between the two systems. Author suggests that both GATT and WIPO should be developed in a spirit of cooperation, utilizing the strengths of both organizations to further ADR in resolving international intellectual property disputes.
NEG: TACTICS, STRATEGIES AND TECHNIQUES- GENERAL

Moore, W.K.. "Mini-trials in Alberta". Alberta Law Review; October, 1995; 34(1): pp. 194-205.
Article examines the Alberta Court of Queen's Bench development and use of the mini-trial as a dispute resolution procedure designed to facilitate and expedite the settlement of disputes. After describing Alberta's success with the mini-trial, the article recognizes and discusses the limitations of the mini-trial process. The article also discusses how and when to initiate a mini-trial. The article concludes by suggesting that lawyers should always consider utilizing the mini-trial process, particularly where lengthy and complex litigation is anticipated.
NON-BINDING RECOMMENDATION PROC- MINI-TRIAL.

Moshe, Hirsch. "The Future Negotiations Over Jerusalem: Strategical Factors and Game Theory." Catholic University Law Review. 1996, 45(3): pp. 699-722.
Article focuses on the Arab-Israeli conflicts that have plagued the peace process in the Middle East. The article suggests that "game" theory should be included in literature discussing the controversy over the rule of Jerusalem. The article contends that only through game theory will we be able to identify the important structural features that are at the heart of the conflict. Using game theory as the methodological basis for resolving the conflict, the article concludes by discussing the possible structural changes regarding the application of game theory to the Israeli-Palestinian peace process as well as the future negotiations over the rule of Jerusalem.
NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- GAME THEORY/ NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-THEORY: GENERAL/ SUBJ MATTER: INT'L.

Moyer, Thomas J.. "ADR as an alternative to our culture of confrontation." Cleveland State Law Review. Winter, 1995, 43(1): pp. 13-17.
Author, the Chief Justice of the Supreme Court of Ohio, proposes that alternative dispute resolution can help to reintroduce civility into a society that has become too contentious. Author states that public debate and reasoned discussion have given way to threats and demands, and he proposes that ADR can provide an alternative to the "culture of confrontation" that is the hallmark of contemporary society. Author argues that ADR is an appropriate alternative because of its goals of accepting responsibility and listening to others.
NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- COOPERATIVE.

Mullgardt, S. Christian. "Settlement Agreements and the Collateral Order Doctrine: A Step In the Wrong Direction?". Journal of Dispute Resolution; Spring, 1995; 1: pp. 155-67.
This note discusses the Supreme Court's decision in Digital Equip. Corp. v Desktop Direct, Inc.. The author discusses the Court's unwillingness to extend the collateral order doctrine to include orders refusing to enforce settlement agreements. Thus, the author notes, a party who is seeking to vindicate a district court's refusal to enforce a settlement agreement must do so via specific statutory avenues. The author views this development as striking a blow to the furtherance of the judicial policy favoring settlement agreements.
SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD.

Mundheim, Peter M.. "The desirability of punitive damages in securities arbitration: challenges facing the industry regulators in the wake of Mastrobuono" (Case Note). University of Pennsylvania Law Review. November, 1995, 144(1): pp. 197-242.
Article outlines the background of and arguments for and against awarding punitive damages in securities arbitration. Author explores the constitutional, judicial and public policy issues raised by awarding punitive damages in such arbitration. He contends that punitive damages serve an important function and that regulatory agencies should balance the due process rights of brokerage firms against public policy concerns in defining the limitations placed on arbitrators to make punitive awards in securities arbitration.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: SECURITIES.

Munson, Daniel C.. "Licensing technology: a financial look at the negotiational process." Journal of the Patent and Trademark Office Society. January, 1996, 78(1): pp. 31-50.
The author describes the negotiation process of licensing technology and the simple economics that should be applied when making such an agreement. He focuses on techonological and business risk at every stage of the process. The author provides some hypothetical scenarios to illustrate the levels of risk involved in these types of transactions. Finally, he applies the analysis to technology licensing and intellectual property valuation.
NEG: TACTICS, STRATEGIES AND TECHNIQUES- GENERAL/ SUBJ MATTER: SCIENCE & TECHNOLOGY.

Murray, John F.. "Mediation of tax controversies: getting to 'yes.'" Tax Notes. February 12, 1996, 70(7): pp. 879-82.
Article discusses the IRS's one year trial procedure involving the use of mediation of certain factual issues in the Appeals administrative process. Author describes mediation in general and then begins a more detailed analysis of the IRS mediation process in particular. In explaining the IRS mediation process, author explores: the parameters of the process, the role of the parties to the mediation, the mediation session, and whether or not a taxpayer should go the mediation route. Author concludes that the parties to a fact-based dispute, whether it be at Appeals or docketed in the Tax Court, should consider mediation if good faith efforts to settle have not been successful.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: TAX

Naranjo, Dan A.. Alternative dispute resolution of internation private commercial disputes under the NAFTA." Texas Bar Journal. February, 1996, 59(2): pp. 116-21.
Article explores the use of arbitration to resolve private international commercial disputes, particularly the use of arbitration to resolve such disputes between U.S. and Mexican businesses under the NAFTA. Author argues that in resolving such disputes the attorney must become familiar with his or her role in negotiations and must be sensitive to cultural differences and the impact of such differences on business relations. Author gives examples of some of the cultural differences that a practicing attorney should expect to encounter while doing business in Mexico. Finally, author gives advice on what provisions to include in an arbitration agreement or clause for resolving private international commercial disputes under the NAFTA.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: INT'L/ COMPARISONS: CROSS-CULTURAL/ SUBJ MATTER: COMMERCIAL.

Nathan, Kathigamar V.S.K.. "Submissions to the International Centre for Settlement Disputes in breach of the Convention." Journal of International Arbitration. March, 1995, 12(1): pp. 27-52.
Article examines whether the submission to the International Centre for Settlement of Investment Disputes (ICSID) of disputes in a civil engineering contract between a foreign contractor and a State is a breach of the ICSID concention. Only legal disputes can be referred to ICSID arbitration, but the disputes must arise directly out of an investment. Author concludes that, in light of the myriad issues relating to international economic law that await resolution, the ICSID should concentrate on investment disputes in the ordinary meaning of the term.

Naughton, Philip. "ADR comes in from the cold" (alternative dispute resolution) (United Kingdom). New Law Journal. March, 1995, 145: p. 383.
Article defines terms involving dispute resolution that appear in the solicitor's checklist which accompanies the Practice Direction of the Lord Chief Justice. Author includes definitions of "Alternative Dispute Resolution [ADR]," and "Formalised Settlement Conference." The author also includes other useful information such as when lawyers should consider using ADR methods and how to arrange mediation.
MED: RELATED PURPOSES- THEORY AND STRATEGIES/ MED: ENCOURAGING COMM AND NEG.

Nelson, Nels E. and A.N.M. Meshquat Uddin. "Arbitrators as mediators"; Labor Law Journal; April, 1995; 46(4): pp. 205-213.
Article concerns mediation of grievances by arbitrators appointed or selected to hear and decide cases who attempt first to mediate, and only if they fail to reach a settlement, decide the case as arbitrators. Author describes the historical views of the proper role of arbitrators acting as mediators and also describes the negotiated grievance procedures in employment contracts. Author concludes that there is a turn back towards seeing arbitration as an extension of the collective bargaining process.
SUBJ MATTER: LABOR-GENERAL.

Nemac, Richard. "Speaking of change" (in the public utilities industry). Public Utilities Fortnightly. March 1, 1995, 133(5): pp. 16-17.
The author reviews the changes which have been taking place in the utility industry. The author reports the value of communication in the changing industry and its use in building trust among employees. The author sets forth five basic rules that a utility company should keep in mind in changing communication systems in the company. The author concludes that the challenge of the changes in the industry is best met with communication.
SUBJ MATTER: PUBLIC UTILITIES.

Neuman, Janet C.. "Run, river, run: mediation of a water-rights dispute keeps fish and farmers happy - for a time." University of Colorado Law Review. Spring, 1996, 67(2): pp. 259-340.
Article examines the Umatilla Basin Project water-rights dispute mediation and the resulting agreements from the viewpoints of both the participants and of the objective author. Author attempts to determine the quality of the justice achieved through mediation, defining justice as the culmination of all private, public and hybrid goods sought to be achieved through dispute resolution. Conclusion reached is that mediation employed here was arguably the best of imperfect choices available; however, the process failed to adequately include various parties and interests, thus failing to achieve truly comprehensive justice.
SUBJ MATTER: PUBLIC UTILITIES / EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES.

Newman, Lawrence W.. "A personal history of claims arising out of the Iranian Revolution." New York University Journal of International Law and Politics. Spring, 1995, 27(3): pp. 631-644.
Author is the chairman of the litigation department of the New York office of Baker & McKenzie, and the article details the firm's involvement with claims against the Iranian government since 1978. Author discusses the impact of the Algiers Accords of 1981, which created the Iran-United States Claims Tribunal in The Hague, which today continues to hear cases stemming from the Iranian Revolution.
ARB: BINDING ARB- GENERAL.

Nibblet, Bryan. "Intellectual property disputes: arbitrating the creative." Dispute Resolution Journal. January, 1995, 50(1): pp. 64-67.
Article offers a definition of "intellectual property" and discusses various issues, including title and infringement, interlocutory relief and public policy. The author argues that because intellectual property disputes often involve highly technical subject matter, parties can benefit from decision makers with specialized knowledge. He concludes that intellectual property disputes are generally well-suited to resolution via arbitration rather than litigation.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: PUBLIC POLICY.

Nichols, Philip M.. "Participation of nongovernmental parties in the World Trade Organization: extension of standing in World Organization disputes to nongovernmental third parties." University of Pennsylvania Journal of International Economic Law. 1996- Spring, 17(1): pp. 295-329.

Article states concern that the World Trade Organization institutes laws that reflect societal values and only incidentally impede trade which does not unify countries, but instead may cause some countries to ignore the World Trade Organization. Author criticizes Professor Shell's model arguing for broad participation in trade dispute resolution and urges that it is not standing that should be expanded, but rather the composition of the dispute settlement panels that should be changed.
SUBJ MATTER: INT'L.

"NASD Panel Revises Arbitration Rules." Journal of Accountancy. April, 1996, 181(4): p. 22.
A report commissed by the National Association of Securities Dealers recommends as many as 70 ways to make securities arbitration less litigious. These rules include suggestions such as placing caps on punitive damages, defining clear processes for arbitration discovery, improving the quality of arbitration panel members, suspending and ultimately rescinding the six-year filing eligibility rule and expanding the ceiling for simplified arbitration procedures from $10,000 to $30,000. The rules are predicted to be received favorably by people working in financial planning services.
ARB: MANDATORY, COURT-ANNEXED- GENERAL

Nissen, William J.. "The federal takeover of arbitration law." Illinois Bar Journal. November, 1995, 83(11): pp. 584-87.
Article explains the Federal Arbitration Act and analyzes the effect of two U.S. Supreme Court cases on Illinois laws governing arbitration. Author explains that several provisions of the Illinois Arbitration Act might conflict with the federal Act. Author cautions that practitioners will have to consider the federal law when drafting arbitration agreements or engaging in litigation relating to arbitration agreements.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ LEGISLATION.

Nolan, John S., F. Brook Voght and J. Bradford Anwyll. "Mediation in IRS appeals-an innovative new process." Tax Notes. February 6, 1995, 66: pp. 1175-1180.
Article discusses the IRS's announcement establishing a one-year test program for mediation at the Service's Appeals Office. The authors review the basic procedures, make suggestions for modifying the process and offer insights into the conduct of the process. Authors conclude that in order for this program to succeed, both the tax bar and the IRS should aggressively promote its use during the one-year test period. Another key to success is finding mutually acceptable, highly qualified mediators with extensive experience in large case settlements.

Nolan-Haley, Jacqueline M.. "Court mediation and the search for justice through law." Washington University Law Quarterly. SPRING, 1996, 74(1): pp. 47-102.
Article focuses on the role of law in mediation, including how it affects the process, outcome and nature of justice the parties receive. Author addresses the criticism aimed towards the perceived absence of law in the mediation process. Author discusses the merits of including law in the mediation process and encourages a greater understanding for the meaning of justice in mediation.
MED: RELATED PURPOSES- THEORY AND STRATEGIES.

Noonan, Daniel A. and Judith M. Bostetter. "Alternative dispute resolution in Wisconsin: A court referral system." Marquette Law Review. 1995-Spring, 78(3): pp. 609-24.
This article describes the processes of dispute resolution in Wisconsin's new ADR law. The author describes the likely effect of mediation, negotiation, early neutral third party evaluations, focus group case assessments, mini-trials, moderated settlement conferences, summary jury trials and arbitration on the civil litigation case load. The authors use Texas' ADR law as a model, citing its similarity with Wisconsin, for predicting effective resolutions of disputes. The authors also outline several matters, not yet addressed by the new ADR state law, that will require resolution in the near future such as the good faith requirement, certification and training, a lack of a code of ethics for mediators and whether immunity applies to decision makers.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ MED: RELATED PROCESSES-GENERAL/ NON-BINDING RECOMMENDATION PROC- GENERAL/ ARB: MANDATORY, COURT-ANNEXED- GENERAL.

O'Brien, Kevin M.. "The effect of political activity by police unions on nonwage bargaining outcomes." Journal of Collective Negotiations in the Public Sector. Spring, 1996, 25(2): pp. 99-116.
Article explores the effect of political pressure by public employee unions seeking more favorable nonwage bargaining outcomes, such as better grievance procedures and workloads. Author measures union political activity as an index, analyzing data drawn from 140 sample cities with collective bargaining agreements with police unions. Result is empirical evidence suggesting that contrary to previous studies, political activity appears to generate tangible benefits in nonwage areas as well as in the previously acknowledged areas of wages, employment and budgets.
SUBJ MATTER: GOV'T CONTRACTS.

O'Mullen, Michael P.. "Seeking consistency in judicial review of securities arbitration: an analysis of the manifest disregard of the law standard." Fordham Law Review. December, 1995, 64: pp. 1121-55.
Article discusses discrepancy among courts for the proper grounds for vacating an arbitration award when the award is inconsistent with established law. Author calls for courts to reject the "manifest disregard of the law" standard as unworkable. Author subsequently advocates the use of a consent decree model with very limited judicial review because this model is most consistent with Congressional intent that arbitration favor efficiency and informality over legal precision. Author notes that this model, rather than a litigation model with probing judicial review, is also most consistent with the general goals of alternative dispute resolution.
SUBJ MATTER: SECURITIES.

Oakley, Ellwood F., III and Donald O. Mayer. "Arbitration of employment discrimination claims and the challenge of contemporary federalism.". South Carolina Law Review; Spring, 1996; 47(3): pp. 475-536.
Note discusses section 118 of the Civil Rights Act of 1991, the FAA, Gilmer, and subsequent caselaw. Note concludes that further federal legislation is warranted and porposes specific changes to existing federal law. Authors propose a requirement of "knowing and voluntary" waiver of jury trial and minimum procedural safeguards to insure resolution in neutral forums.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Ollenschleger, Craig A.. "Education law - arbitration." Seton Hall Law Review. 1995-Spring, 25(4): pp. 1669-76.
This article reviews the New Jersey Supreme Court's decision in Scotch Plains-Fanwood Bd. of Ed. v. Scotch Plains-Fanwood Ed. Ass'n.. The NJ Court upheld an arbitrator's application of a "just cause" standard as proper in the absence of a specific standard of review mutually agreed upon by the negotiating parties. The author describes how the NJ Court supported its decision by citing similar standards in other related collective bargaining arbitration as well as demonstrated legislative intent to heighten procedural protection for teachers in disciplinary actions. The author argues that the likely result is that education administrators will have to implement extensive management policies and maintain detailed records of questionable employee conduct.
SUBJ MATTER: EDUCATION/ SUBJ MATTER: LABOR-GENERAL.

Oswald, Anne. "Mediation in family disputes". Journal of the Law Society of Scotland; March, 1996; 41(3): pp. 5-17.

Article responds to criticisms of mediation raised by Fiona Raitt in the May 1995 issue of Journal of the Law Society of Scotland. Author identifies five criticisms of mediation relating to: standards in mediation practice, confidentiality, power imbalances, mediator neutrality, and prejudice to reform of the existing system. Author considers each of these criticisms, looking specifically at how they relate to mediation as practiced in services affiliated with Family Mediation Scotland (FMS). Author concludes that despite the criticisms of mediation, mediation can provide a useful additional resource for many or even most divorcing parents.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL)/ SUBJ MATTER: INT'L.

Outten, Wayne. "Alternative dispute resolution and the Americans with Disabilities Act." St. John's Journal of Legal Commentary. Summer, 1995, 10(3): pp. 597-601.
Author, a plaintiff's employment lawyer, notes that the use ADR is the superior method for resolving employment disputes. Author discusses a four step process of first negotiating with an employer a reasonable accommodation for a disabled employee. Author states that if the situation cannot be settled through direct negotiations, then mediation is the next logical step to resolve the dispute.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Panel Discussion. "Eligibility ('six year') rule" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of November 21, 1994). Fordham Law Review. April, 1995, 63(5): pp. 1533-1549.
Article is transcript of the panel discussion on the "six year" rule that limits claims' eligibility for arbitration. The current rule is that a claim's eligibility for arbitration begins to run as of the purchase of date of the Security and is limited to six years. This is an absolute standard, which does not allow for excuses and also limits the time to access the court system. Two points of view are discussed: the first submits that six years is along, generous period of time and that the standard is used for convenience. The second criticizes the rule because it is inelastic, used to extinguish viable claims under state and federal law, in regards to the tolling of things as related to accrual and estoppel of statutes of limitations. Its elimination is proposed.
SUBJ MATTER: SECURITIES.

Panel Discussion. "Employment discrimination" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of December 5, 1994). Fordham Law Review. April, 1995, 63(5): pp. 1613-1642.

Article is transcript of the panel discussion on employment discrimination grievances processed through arbitration. Discussion focuses on whether arbitration proceedings are the proper forum for these type of grievances. One side argues that arbitrators are poorly trained, that this is not the type of dispute SICA had in mind for arbitrations, that management attorneys treat process as a court proceeding, submitting lengthy briefs and evidence, and concludes that the whole process should be re-examined because it does not accomplish a fair and speedy resolution. The other view point is that arbitrators are competently trained to deal with these issues, that their role is not to fix the system but to resolve individual disputes, that very few employment discrimination arbitrations are brought every year, that employees have a proven fifty percent chance of success and that ultimately this system is fast, cheap and fair.
SUBJ MATTER: SECURITIES.

Panel Discussion. "Introductory Remarks" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of December 5, 1994). Fordham Law Review. April, 1995, 63(5): pp. 1599-1603.
Article is transcript of the introductory remarks to the second weekend session of the NYSE conference on arbitration in the Securities industry. The speaker discusses the impact of the new "loser pays" provision of section 21 of the Securities Exchange Act. He also discusses the addition of section 39, which is entitled "The Alternative Dispute Resolution Procedures Act." He concludes that with both of these provisions in effect, many disputes will be forced into arbitration. Also states that the process has extended to cover disputes that have not traditionally been part of arbitration and speculates as to whether a new subchapter to the Uniform Code of Arbitration of the NYSE will be needed.
SUBJ MATTER: SECURITIES.

Panel Discussion, **Kotsiris, Gus.** "Introductory Remarks" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of November 21, 1994). Fordham Law Review. April 1995, 63(5): pp. 1507-1510.
Article is transcript of the introductory remarks to the topic of the evolution of arbitration in Securities involving the public. The speaker remarks briefly about the history leading up to today's symposium. Speaker introduces the topics of the panels for the day and the participants: pre-dispute arbitration agreements, eligibility ("the six year rule"), discovery and punitive damages.
SUBJ MATTER: SECURITIES.

Panel Discussion. "pre-dispute arbitration agreements"(New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of November 21, 1994). Fordham Law Review. April 1995, 63(5): pp. 1511-1532.
Article is transcript of the panel discussion on pre-dispute arbitration agreements. Panelists are the attorneys that litigated "Shearson v. McMahon," the leading case in this area. Two opposing views are discussed: one submits that these pre-dispute arbitration agreements, while adhesion contracts, are still enforceable because of the courts favorable attitude towards arbitration of disputes. This is currently the law. The other side admonishes the customer's right to chose between a court and arbitration.
SUBJ MATTER: SECURITIES.

Panel Discussion. "Punitive Damages" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securiteis Industry, session on November 21, 1994). Fordham Law Review. April, 1995, 63(5): pp. 1571-1594.
Article is transcript of the panel discussion on punitive damages in Securites arbitrations. The discussion focuses on the inconsistent interpretation by courts of whether punitive damages are appropriate in an arbitration proceeding. One side forwards that punitives are needed and that if they are appropriate in a court proceeding, then they are also appropriate in an arbitration. The opposing point of view argues that the award of punitive damages is not within the arbitrator's role and, further, that the Securities industry has many regulatory agencies overseeing its operations, so that it has enough adequate supervision and control.
SUBJ MATTER: SECURITIES.

Panel Discussion. "Punitive damages" (New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry, session of December 5, 1994). Forham Law Review. April, 1995, 63(5): pp. 1613-1642.
Article is transcript of the second panel discussion on the topic of punitive damages in arbitrations. One of the panelists recites the history and content of punitive damages. Two opposing points of view on this subject are, in general terms, the one that considers that there is enough regulation on the industry by governmental agencies and the one that deems it proper for arbitrators to award punitive damages in order to provide for a fair result. A middle ground is suggested. To address the due process concern of run away jury awards, it is conceeded that a well educated arbitration panel would treat the subject differently. The viability of a built-in punitive award into the Uniform Code of Arbitration of the NYSE is also discussed. An alternative mechanism to appeals in the court system is also suggested. However, no concensus is reached as to the propriety of punitive awards in arbitration.

SUBJ MATTER: SECURITIES.

Paradise, Gregg A.. "Arbitration of patent infringement disputes: encouraging the use of arbitration through evidence rules reform." Fordham Law Review. October, 1995, 64(1): pp. 247-79.
Author examines the use of binding arbitration in patent infringement disputes and advocates the adoption of a modified version of the Federal Rules of Evidence for use in patent arbitrations. Author discusses the deficiencies of patent litigation in the Federal Courts and the arbitration of patent infringement disputes. Author outlines the advantages of arbitration over litigation and the possible limitations on the effectiveness of patent arbitration. Author then discusses advantages and disadvantages of not having Rules of Evidence for patent arbitrations and concludes by arguing in support of a modified set of rules of evidence for patent arbitrations.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Park, William J.. "Illusion and reality in international forum selection" (Symposium on Internation Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 135-204.
Article proposes an international choice-of-court statute to replace the inconsistent American jurisdictional rules. Articles assures such an act would serve to stay litigation insconsistent with the parties' jurisictional choice and federal courts generally could be required to hear all international cases when designated by a valid forum selection clause. Author concludes that such an act would provide far greater reliability in forum selection.
SUBJ MATTER: INT'L.

Park, William W.. "Neutrality, predicatability and economic co-operation." Journal of International Arbitration. December, 1995, 12(4): pp. 99-112.
Article uses international lawyers' favoring of neutral and predicatable laws as a model for other more authoritative systems. Author argues that consistent application of set rules, even if occasionally resulting in "unfair" results, is the best option because it is even more unfair to give the parties no reasonable means for predicting results other than vague notions of fairness or equity.
SUBJ MATTER: INT'L.

Partridge, Dane M.. "Teacher strikes and public policy: does the law matter?". Journal of Collective Negotiations in the Public Sector; Winter, 1996; 25: pp. 3-21.
Article analyzes teacher strike activity using state-level data over a six-year period. Author uses economic environment, organizational and legal

environment factors in her empirical study to determine how different aspects of public policy affect strike activity in the public sector. The author concludes that the presence of binding arbitration minimized teacher strike activity, and that therefore a state legislature can effectively reduce such strikes by imposing arbitration as a matter of public policy.
ARB: BINDING ARB- GENERAL.

Pave, Margo. "Public employees and the First Amendment petition clause". Northwestern University Law Review; Fall, 1995; 90: pp. 304-345.
Article discusses whether or not the Petition Clause specifically provides protection against retaliatory discharge for public employees who have filed grievances against their employer. Author reviews the federal caselaw interpreting both the right to free speech and the right to petition the government for redress of grievances. The author argues that the right to petition is historically distinct from the right to free speech, and that therefore the "public matters" standard for retaliatory dismissal claims under the Free Speech Clause does not necessarily apply to similar claims brought under the Petition Clause.
SUBJ MATTER: LABOR-GENERAL.

Peck, Sarah Catherine. "Playing by a new set of rules: Will China's new arbitration laws and recent membership in the ICC improve trade with China?" Journal of International Arbitration. December, 1995, 12(4): pp. 51-64.
Article examines China's entrance into the International Chamber of Commerce (ICC) and how this will affect China's efforts to integrate more fully into the world marketplace. In particular, entrance into the ICC allows foreigners to use the ICC Rules on arbitration, a set of rules generally more favorable to non-Chinese business. But, author also notes that China's won intenal system of arbitration has become more friendly to foreigners, including the allowance of arbitration being conducted in a language other than Chinese.
SUBJ MATTER: INT'L.

Pemberton, Adam. "Mediation and divorce reform proposals." Family Law. April, 1996, 26: pp. 220-21.
Article discusses how the interaction of the legal aid proposals for reform and The Family Law Bill proposals will jeopardize the co-operation of the many family mediation services throughout the United Kingdom. The author states that the co-operation is jeopardized because the legal aid proposals for contracts coupled with the divorce reform proposals seem likely to put each agency in competition with the others. Unless and until the Lord Chancellor's Department and the Legal Aid Board understand and

accept the need for co-operative interdisciplinary working, the public is likely to be short-changed on the mediation that it is offered and can afford.
MED: PUBLIC POLICY DIALOGUE.

Pentelexhuk, Dawn. "Rule 219: stairway to heaven". Alberta Law Review; October, 1995; 34: pp. 180-193.
Article deals with Rule 219 of the Alberta Rules of Court, which pertains to pre-trial conferences. Author addresses the shortcomings of Rule 219's predecessor, outlines the reform process which led to the current rule, and evaluates whether it has met the goals of settling actions and managing actions to the point of trial. Author concludes that the settlement of actions has not been changed by the new rule and offers advice for improving the current scheme.
MED: PRETRIAL CONF/ SUBJ MATTER: INT'L.

Perkovich, Robert. "Does Gilmer v. Interstate/Johnson Lane Corp. compel the consideration of external law in labor arbitration? An analysis of the influence of the Americans with Disabilities Act on arbitral decision-making" Stetson Law Review; FALL, 1995; 25: pp. 53-80.
Article addresses the historical debate among labor arbitrators around whether they should consider external law in resolving contractual disputes that arise under a collective bargaining agreement. Article also reviews the United States Supreme Court's changing view regarding the acceptability of arbitration, the impact of that changing view on the external law debate, and specific decisions of labor arbitrators. Author concludes that the debate should be resolved in favor of applying external law when interpreting collective bargaining agreements.
ARB: JUDICIAL REVIEW/ SUBJ MATTER: LABOR-GENERAL.

Pertcheck, Kerri M.. "Arbitration Survey" (Twenty-First Annual Circuit Survey: September 1993-December 1994). Denver University Law Review. 1995, 72(3): pp. 571-92.
Article discusses contemporary Tenth Circuit arbitration cases. Author reports that recent decisions reaffirm the main precepts of arbitration espoused by other federal appellate courts. As to labor law, where parties enter into a contract that contains an arbitration clause, there is a presumption in favor of arbitrability and, once an arbitration award is entered, the judiciary generally should not review it. However, arbitration may not be an acceptable forum to resolve individual civil rights claims because such cases fall outside of the scope of most collective bargaining agreements and involve complex legal issues. With respect to commercial law, federal policy, as encapsulated in the Federal Arbitration Act, favors arbitration, and, although immediate de novo appellate review of an order

"refusing to stay" litigation is allowed, any judicial review mandates that courts do not unnecessarily intrude upon contractually imposed arbitration.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: GENERAL/ REQUIREMENTS: MANDATE TO USE/ SETTLEMENT: AUTHORITY/ SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD.

Petersen, Donald J.. "No smoking! The arbitration of smoking restricting policies." Dispute Resolution Journal. January, 1995, 50(1): pp. 44 - 49.
Article discusses author's review of arbitration awards from 1984-1994 dealing with grievances protesting enactment of work rules limiting or banning smoking in the workplace. The review reveals a great deal of variation in arbitrator attitudes toward smoking, with some viewing it as a right and other viewing it as a privilege that may be unilaterally revoked. The author notes that there does appear to be widespread arbitral agreement concerning management's right to implement reasonable smoking restrictions, absent contractual limitations.
SUBJ MATTER: LABOR-GENERAL/ ARB: BINDING ARB-GENERAL.

Piggot, Simon. "Lawyer mediators and supervision --The FMA view." Family Law. May 1996, 26: pp. 313.
Author defends Family Mediators Association (FMA) view of mediator training based on co-mediation. Author contends that through complete training, including co-mediation in which a mediator-in-training actively participates with a supervising mediator, a mediator is better prepared for the mediation process. In addition, the co-mediation model of supervision provides necessary safeguards to ensure respect from peers and trust of the public.
MED: RELATED PURPOSES- THEORY AND STRATEGIES.

Pikl, James. "Arbitration and the DTPA". Texas Law Review; Summer, 1995; 26(3): pp. 881-901.
Article discusses the enforceability of contract clauses requiring parties to arbitrate future disputes, specifically claims involving the Texas Deceptive Trade Practice Consumer Protection Act. Article discusses common law arbitration, and statutory and common law challenges to contracts to arbitrate. Author analyzed several cases where parties claimed that DTPA disputes could not be arbitrated because DTPA claims, as statutory claims, should not be subject to ordinary contract law analysis.
REQUIREMENTS: CONTRACTUAL CLAUSES/ SUBJ MATTER: COMMERCIAL.

Pilla, Jennifer L.. "Agreeing on where to disagree: Jain v. de Mere and international arbitration agreements". North Carolina Journal of International Law and Commercial Regulation; Winter, 1996; 21(2): pp. 421-441.
Examines a Seventh Circuit of Appeals decision that broadly interpreted Section 2 of the FAA by an arbitration agreement between foreign nationals who had not specified the location or arbitrator selection process in their agreement. Author concludes that the 7th Circuit's decision too broadly interpreted Section 2 of the FAA, and that courts may only compel arbitration within their jurisdiction if they have statutory jurisdiction over the parties.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Piskulich, J.P.. "Hearts and minds: a case study of executive and supervisor unions in local government". Journal of Collective Negotiations in the Public Sector; Fall, 1995; 24(4): pp. 271-283.
Article, using a case study of a Michigan city in which all employees except the city manager and one assistant are unionized, explores the significance of having department heads and supervisors sitting on both sides of the bargaining table-- negotiating not only with subordinates, but also with the city on their own behalf. Author finds that the arrangement is workable in this jurisdiction and implies that bargaining rights might be successfully extended to public administrators in general.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: GOV'T.

Pons, Ted. "DART is aimed at construction bulls-eye." Dispute Resolution Journal. January, 1995, 50(1): pp. 51-53.
Article reports on October 1994 Dispute Avoidance Resolution Task Force (DART) Conference, held at the University of Kentucky. Focusing on dispute resolution in the construction industry, DART has shown much success. Article reports on positive survey results showing increasing awareness and use of ADR techniques in resolving construction disputes.
SUBJ MATTER: CONSTRUCTION.

Ponte, Lucille M.. "Putting mandatory summary jury trial back on the docket: recommendations on the exercise of judicial authority." Fordham Law Review. March, 1995, 63(4): pp. 1069-1098.
The author provides an overview of the summary jury trial (SJT) in which she considers the objectives and procedures of the process. The author analyzes the divergent federal court decisions on mandatory summary jury trial and how recent changes in statutory law clarify that judges have the power to require SJT without either parties' consent. The author argues

that judges should exercise their power under court guidelines aimed at protecting party and court interests. The author suggests guidelines which call for improved court record-keeping and evaluation as well as increased attorney education on SJT.
NON-BINDING RECOMMENDATION PROC- SUMMARY JURY TRIAL.

Ponzio, Richard J.. "Beyond 1994: negotiating a new United Nations through Article 109". The Fletcher Forum of World Affairs; Winter-Spring, 1996; 20: pp. 149-156.
Article considers the necessity for implementing Article 109 of the United Nations Charter to address the fact that the original U.N. Charter is insufficient to address contemporary international concerns. Author argues that the environmental, social and economic problems facing the world, including resource depletion and uncontrolled technological expansion, are not the types of concerns that the 1945 Charter was meant to deal with. The author concludes that the U.N. Charter needs to amended or redesigned in order to prevent the otherwise imminent and world-wide disasters from occurring.
SUBJ MATTER: INT'L.

Portlock, Peter. "Alberta Arbitration and Mediation Society." Alberta Law Review. October, 1995, 34(1): pp. 279-280.
Author outlines history and purpose of this organization. Author discusses main function of organization which are to produce annual directory or arbitrators and mediators, consultation services, and production or publications.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Pratter, Jonathan. "Choice of Law in International Commerical Arbitration". Texas International Law Journal; Spring, 1995; 30(2): pp. 420-421.
Article offers a review of the book "Choice of Law in International Commerical Arbitration" by Okezie Chukwumerije/ Article notes that the book under review provides a competent review of: (1) the law governing the merits of the dispute; (2) the law governing the agreement to arbitrate, and (3) the law governing the conduct of the proceedings. Author finds that, at some points, a fuller discussion of the issues is desired, but finds criticism is somewhat mitigated by the full references found in the footnotes. Overall, the book is straight-forward and well organized.
SUBJ MATTER: INT'L/ SUBJ MATTER: GENERAL.

Privatsky, Mark R. . "A Practitioner's Guide to General Order 95-10: Mediation Plan for the United States District Court of Nebraska." Nebraska Law Review. 1996, 75, (1): pp. 91-116.
The article discusses General Order 95-10 creates federal court mediation in Nebraska. The article describes six categories of cases that have been designated for mediation by the federal courts in Nebraska. Along with a lengthy discussion concerning the mediation process in Nebraska, the article also discusses procedural matters like filings and motions, costs and evidentiary concerns.
MED: RELATED PROCESSES-GENERAL.

Pynes, Joan E.. "The Two faces of unions". Journal of Collective Negotiations in the Public Sector; Winter, 1996; 25(1): pp. 31-43.
Article discusses ways unions have expanded the scope of negotiations beyond economic concerns by adapting to societal and workplace changes and playing a critical role in defining public policy. Author describes increased union advocacy of issues such as workforce diversity, equal job opportunities, education and training, domestic partnership benefits and flexible health and family care options. Author provides a table of common collective bargaining contract clauses as well as a table of more innovative contract clauses.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: PUBLIC POLICY.

"Quiz on legal aspects of bidding and negotiating practices." Corporate Counsel's Quarterly. July, 1995, 11(3): pp. 135-155.
Article covers 43 common questions purchasers and their legal advisers have regarding the legality of certain bidding and negotiation practices. Authors make distinctions between legal requirements (i.e. what the law allows) and purchasing ethics (i.e. what may seem improper due to purchasing practice), showing that what the law will allow may violate some notions of purchasing ethics. Authors discuss particular negotiation tactics including use of hard bargaining for quotations, use of target price analysis, use of information that is either unpublished or not widely known in the industry, use of trade secrets and confidential information, use of "carrot" estimates of need and misrepresentation thereof, and issues that arise from possible bankruptcy by seller/vendor.
NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- COMPETITIVE.

Rau, Alan Scott and Edward F. Sherman. "Tradition and innovation in international arbitration procedure (Symposium on International Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 89-119.

Article discusses five prominent areas in which there has been calls for procedural innovations - conduct of the arbitration hearing, discovery, fast-track procedures, alternative dispute resolution, and party structure in multi-party disputes. Author contends that, in these areas, there is far greater latitude at the planning and drafting stages for parties, their counsel, and the arbitral institutions to work at developing creative procedures to improve the arbitration process. Author concludes pressures to change international arbitration come from cross-cultural influences, experimentation with less formal and less rigid dispute resolution mechanisms, and consumer demand for a more efficient, less expensive process.
SUBJ MATTER: INT'L.

Ravdin, Linda J.. "Coping with the difficult lawyer in settlement negotiations." Compleat Lawyer. SPRING, 1996, 13(2): pp. 42-45.
Article discusses the impediments to successful resolution through settlement negotiations. Author provides many suggestions for overcoming these barriers and obtaining a mutual compromise. Author also discusses how to deal with an opposing attorney or client who is unwilling to settle.
NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- COOPERATIVE

Ray, Jean-Emmanuel and Jacques Rojot. "Worker Privacy in France" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 61-74.
Article describes legislative efforts in France that balance protection of employee privacy against enterprise interests. Authors relate that, unless private behavior negatively impacts the business, an employer can neither interfere with the private life of an employee outside of work nor unnecessarily limit an individual's public freedoms at work. Authors report that the pioneering Act on Computer Science and Freedom regulates information gathering with requirements such as advance disclosure to job applicants of all investigation methods, work council involvement when suspicious questions are asked, and access to collected information. Authors discuss the restricted circumstances in which monitoring of employees is allowed and the strict limitations on dismissal for health reasons. Authors conclude that employee privacy deserves more focused protection than various statutes currently provide.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Rayburn, Jill Richey. "Neighborhood justice centers: community use of ADR - does it really work?". The University of Memphis Law Review; Spring, 1996; 26(3): pp. 1197-1228.

Article discusses public policies behind the development of neighborhood justice centers and the growth of their use. Author explains that neighborhood justice centers allow for community values and community responsibility to be an important factor in resolving disputes. Author also provides examples of how various centers are operated. Author concludes that centers are successful in reducing costs within their jurisdiction and revitalizing community behavioral standards.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: COMMUNITY/ ORGANIZATION POLICIES AND RULES

Recent Cases. "Arbitration - statutory claims - ninth circuit imposes knowing waiver standard for mandatory arbitration of sexual harassment claims - prudential insurance co v lai." Harvard Law Review. April 1996, 109: pp. 1439-44.
Article explores the ramifications of the Ninth Circuit's recent decision, which held that arbitration agreements do not apply to statutory claims unless the employee knowingly agreed to arbitrate them. Author contends that contrary to criticism, the decision is consistent with other supreme court decisions on mandatory arbitration, particularly the Court's decision in Gilmer v Interstate/Johnson Lane Corp., 500 US 20 (1991). Article concludes the Ninth Circuit's decision represents a long-overdue recognition of the disadvantages faced by employees confronted with mandatory arbitration clauses.
SUBJ MATTER: LABOR-GENERAL.

Reder, Margo E. K.. "Punitive damages are a necessary remedy in broker-customer securities arbitration cases." Indiana Law Review. Winter, 1995, 29(1): pp. 105-130.
Article addresses recurring questions regarding the availability of punitive damages awards in securities arbitration. Author notes that the issue turns on views of governmental power: an expansive view recognizes the ability of arbitrators to make such awards, while a restrictive view upholds some state laws that allow awards only of compensatory damages. Author contends that punitive damages must be available so that the relief granted by arbitrators mirrors the relief granted by courts.
ARB: FEES AND FUNDING OF ARBITRATOR.

Redfern, Alan D.. "Arbitration and the courts: interim measures of protection- is the tide about to turn?" (Symposium on International Commercial Arbitration). Texas International Law Journal. Winter, 1995, 30(1): pp. 71-88.
Article explains the tensions between arbitration and the courts of law, particularly where relief is being sought from the courts in circumstances in which it may be argued that the argument to arbitrate is being set aside.

Article recognizes that arbitral tribunal's power to give interim measures of relief, as in other matters, falls well short of the powers possessed by courts of law. Author concludes that a change in perception may be called for to permit arbitrators to enact certain, codified interim measures for a proposed model act. Author believes the change in perception necessary is one in which a relationship between the courts and arbitral tribunals view each other as partners, not adversaries.
SUBJ MATTER: INT'L.

Reisman, W. Michael and Mark Wiedman. "Contextual imperatives of dispute resolution mechanisms; some hypotheses and their applications in the Uraguay Round and NAFTA." Journal of World Trade. June, 1995, 29(3): pp. 5-38.
Authors describe the intricacies and strategies of drafting choice of forum clauses for Dispute Resolution Mechanisms (DRM's) in trade agreements between Nation States. Article contrasts the competing interests of parties, focusing on the importance of and distinctions between hard law (normatively birght-line) and soft law (normatively fuzzy), asymmetrical power relationships (stronger party vs. weaker party), and international policy and politics. Authors also closely examine the DRM's of the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), and the Canadian Free Trade Agreement (CFTA), concluding that the procedures of the WTO Uruguay Round are much better suited for disputes that involve multilateral international subsidies than those of NAFTA or CFTA because the WTO approach is more adjudicatory than decision-making, but that NAFTA's approach may be better suited to its political context. Authors conclude that in drafting international trade agreements, attorneys should carefully choose a forum that through its procedures will minimize frustration and tension between parties, allowing the parties to attain their goals rather than vitiate their trade agreement.
MED: RELATED PROCESSES-GENERAL/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Reske, Henry J.. "Long-range plan would cut federal cases: draft report warns of a "nightmare" future if recommendations ignored." ABA Journal. February, 1995, 81: pp. 22-23.
Article summarizes the potential problems facing the judiciary in the long-range future. Article reviews some of the testimony given to the Judicial Conference in attempting to formulate its plan. Article reports on the Judicial Conference of the United States' long-range plan which deals with these problems.

Reske, Henry J.. "Victim-offender mediation catching on. ABA Journal. February, 1995, 81: pp. 14-15.

Article provides brief overview of victim-offender mediation programs in use around the country. Author explains the process and structure of a typical program and reports that both parties to the mediation derive benefit from the experience. Author also describes case study of a man shot during a robbery; the victim eventually sits down to mediation with the man who shot him.
SUBJ MATTER: CRIMINAL/ MED: RELATED PROCESSES-GENERAL.

Resnick, Judith. "Procedural innovations, sloshing over: a comment on Deborah Hensler, 'A glass half full, a glass half empty: the use of alternative dispute resolution in mass personal injury litigation. Texas Law Review. June, 1995, 73(7): pp. 1627-1645.
Rather than critique, article elaborates on lessons to be drawn from Hensler's discussion of ADR in mass torts. Author specifically comments on (1) the role of judges in mass torts as deal-makers and managers rather than simple umpire and adjudicator; (2) the influence of "big case" innovations on "small, ordinary" cases (particularly noting the historical development and implementation of Rule 16 pretrial conferences); (3) a loss of procedural integrity, the effect of which is the preclusion of the individual claimant's ability to manage his "own" case (emphasizing the practical preferences for ADR resolution mechanisms over traditional court litigation); (4) the perception of declining enthusiasm for adjudication, promoting a shift towards non-adjudicatory resolutions; and (5) individual plaintiff participation and the role of the individual plaintiff's lawyer in mass tort cases (noting problems with confidentiality, fee structure, and client attention and care). Author concludes that promoters of innovative procedures, particularly regarding mass torts, should take a more active interest in the long term ramifications of those procedures for all "players" in the legal system, considering both the positive and negative effects, before what is "extraordinary" and "limited" becomes regular due to frequent practice.
MED: OTHER JUDICIAL SETTLEMENT DEVICES/ SUBJ MATTER: OTHER TORTS/ COURT REFORM.

Reuben, Richard C.. "And the winner is . . . arbitration to resolve disputes as they arise at the olympics." ABA Journal. April, 1996, 82: p. 20.
An expedited arbitration process will be adopted at the 1996 Summer Olympic Games in Atlanta. Arbitrators will be standing by around the clock and will have the authority to act quickly and make final determinations to resolve problems ranging from drug-testing disqualifications to photo finishes. The International Court for the Arbitration of Sport (ICAS), composed of 20 political and legal leaders

drawn essentially from the International Olympic Committee, has composed a list of nearly 100 arbitrators all from judicial or sports backgrounds. Olympic officials hope that the new arbitration policy will put an end to the increasing lawsuits filed by high-profiles athletes at major sporting events.
ARB: BINDING ARB- GENERAL.

Reuben, Richard C.. "Baseball strike teaches legal lessons: lawyers should reassess strategies, avoid animosities, in negotiations." ABA Journal. June, 1995, 81: pp. 42-43.
Article discusses the impact of NLRB injunctions against unfair labor practices in Major League Baseball collective-bargaining disputes. Author notes that the March 31, 1995 injunction provided immediate relief from the impasse between the players and management, speeding up the bargaining process. Author suggests that injunctions enhance the likelihood of good faith bargaining an allow attorneys to serve better as counselors, helping their clients moderate their positions rather than act as a mere advocate.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: SPORTS & ENTERTAINMENT.

Reuben, Richard C.. "Getting out of a JAMS: ADR provider's new policy discourages companies from requiring arbitration of employee disputes." ABA Journal. April 1996, 82: p. 41.
Article discusses the decision by JAMS/Endispute, one of the nation's largest private ADR providers, to no longer accept disputes requiring employees to submit to binding arbitration unless certain safeguards are met. The company will now only accept these cases if full remedies, reasonable discovery, the right to counsel and other safeguards exist.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Reuben, Richard C.. "Investors' attorneys find task force report faulty; recommendation to cap punitive damages in securities arbitrations raising most controversy." ABA Journal. April 1996, 82: pp. 40-41.
Article describes reaction of investors' lawyers to new rule recommendations which would cap punitive damages, reform discovery, expand the pool of arbitrators and recommend increase use of mediation. Investors' lawyers claim the $750,000 cap is not sufficient deterrence for companies. In addition, the investors' lawyer claim the new rules may jeopardize the industry's mandatory arbitration system, which is predicated on the notion that the same substantive rights and remedies as litigation are available in arbitration.
SUBJ MATTER: SECURITIES.

Reuben, Richard C.. "Model ethics rules limit mediator role. ABA Journal. January, 1996, 82: pg. 25.
The United States' first model ethics rules for mediators are out and are drawing praise and plenty of criticism from experts. The article describes how the rules were created and the difficulties that arose with determining the actual role of the mediator in the mediation process and expert reactions to the rules. The controversy arises in the comments to the rules which state that mediators are to refrain from providing professional advice. The article describes how many mediators argue how this rule conflicts with their obligation to propose options to participants.
MED: OPENING AND SETTING GUIDELINES/ ETHICS: GENERAL.

Reuben, Richard C.. "Two agencies review forced arbitration: EEOC gets injunction against company that told workers: accept ADR or quit". ABA Journal; August, 1995; 29(4): p. 26.
Article presents the opinion that two federal agencies, the Equal Opportunity Commission and the National Labor Relations Board, are more clearly analyzing the practice of mandatory arbitration in workplace disputes. Author demonstrates that the EEOC encourages voluntary programs for handling EEOC charges in the private sector. A few cases are being reviewed to determine whether mandatory clauses are an unfair labor practice. Opposite opinions on the EEOC's interpretation of mandatory arbitration are also provided.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Riatt, Fiona E.. "Mediation as a form of alternative dispute resolution". Journal of the Law Society of Scotland; May, 1995; 40(5): pp. 182-184.
Article analyzes the growing family mediation process in Scotland and raises a number of questions. Author is concerned that mediation will allow the dominant partner to continue dominating the relationship during the divorce process because of the inherent nature of the relationship and the mediator's outcome-driven motives for reaching a settlement. She is concerned that a mediator cannot remain impartial, and that the power imbalance in the family relationship will be altered by the mediator's choice to remain detached, allowing the stronger party to prevail, or to throw his weight behind the weaker, disadvantaged party. Author urges caution be exercised before family mediation is given a stamp of approval.
SUBJ MATTER: FAMILY (DOMESTIC REL).

Richardson, Margaret Milner. "Commissioner Richardson urges creative response to pension problems." Tax Notes. February 6, 1995, 66: pp. 851-853.

Article reflects upon twenty years of administering the Employee Retirement Income Security Act of 1974 (ERISA). Author states that the tension between enforcement sanctions on a plan sponsor for code violations and the need to protect and preserve employees' retirement benefits is a challenge that the IRS faces in administering ERISA. Author urges tax attorneys to think creatively about how to address the difficult issues posed by employee plans and exempt organizations.

Ricker, Di Mari. "Closing a war." ABA Journal. January, 1996, 82: pp. 69-73.
The article gives an account of how a California real estate attorney became involved in the Bosnian peace negotiations. The author details how Serbian leader, Karadzic, utilized his American connection to bring the attorney with a reputation for "getting things done" into the negotiation process. The attorney was working closely with the Jimmy Carter Mission in the region. Furthermore, the article described the process by which the negotiations were conducted with all the parties involved and what role the negotiations had in the eventual ceasefire agreement reached during the Dayton peace talks.
NEG: EVAL OF OPTIONS AND OFFERS

Ringler, Robert A.. "Gilmer and complusory arbitration of employment claims in the union sector: Avoiding a distinction without a difference." Labor Law Journal. March 1996, 47(3): pp. 147-161.
The article analyzes the enforceability of a union's agreement to arbitrate its members statutory employment claims in the collective bargaining context. Article supports the proposition that unions and employers can agree to binding arbitration of statutory employment claims. Author discusses the Supreme Court's recent approval of arbitration of statutory employment claims in the non-union setting and how the Supreme Court precedent and analogous principles support such arbitration of agreements in the union area.
ARB: BINDING ARB- GENERAL

Rome, Roberto and Silvana Sciarra. "The Protection of Employees' Privacy: A Survey of Italian Legislation and Case Law" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators). Comparative Labor Law. Fall, 1995, 17(1): pp. 91-106.
Article discusses the Workers' Statute of 1970 in Italy that defines limits on managerial control over employees regarding surveillance and that prohibits employer investigation related to an employee's private life, provided no business necessity justifies disregard of the restrictions. Authors speculate that technological improvements render present legislation largely

ineffective, piecemeal protection of employees' personal rights. Authors also discuss health-related discrimination, freedom of speech and other issues related to employee privacy.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Rose, Carol M.. "Bargaining and Gender" (Feminism, Sexual Distinctions, and the Law). Harvard Journal of Law & Public Policy; Spring, 1995, 18: pp. 547-563.
Article applies basic bargaining theories to issues of women's status and health. Author examines the cultural assumption that women have a greater taste for cooperation and its effects on allocation of women's assets. For a further discussion and description on the subject, see same author, "Women and Property: Gaining and Losing Ground." 78 Virginia Law Review 421, (1992).
NEG: CULTURAL CONSIDERATIONS/ SUBJ MATTER: CIVIL RIGHTS.

Rose, Joseph B. & Gary N. Chaison. "Canadian labor policy as a model for legislative reform in the United States" Labor Law Journal; May, 1995; 46(5): pp. 259-272.
Article examines recent labor law reforms by the social democratic governments in the provinces of Ontario and British Columbia. Author argues that diversity in Canadian labor policy is seldom fully recognized by the United States and that values underlying Canadian labor law should shape the debate over similar reform in the United States. Article concludes by stating that the Canadian model moves the labor law reform debate to a more productive, less contentious plane with its focus on the protection of workers' rights, whereas the United States focuses primarily on balancing the power between labor and management.
SUBJ MATTER: INT'L/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Roumell Jr., George T.. "Arbitration." Detroit College of Law Review. 1995-Summer, 2: pp. 281-90.
This article reviews the Sixth Circuit's arbitration decisions in a sixteenth annual survey. Among the noted opinions, the author reports that the Sixth Circuit has insisted that the FAA does not grant subject matter jurisdiction to federal courts. Further, the author notes that the circuit held that since non-union employees of a bargaining unit did not agree to be bound by the collective bargaining agreement, there was no written agreement to arbitrate.
SUBJ MATTER: GENERAL.

Roy, Kristin T.. "The New York Convention and Saudi Arabia: can a country use the public policy defense to refuse enforcement of non-domestic arbitral awards?" Fordham International Law Journal. March, 1995, 18(3): pp.920-958.
The author discusses whether Saudi Arabia's adoption of the New York Convention will advance the use of international arbitration by non-Saudian investors. The author examines the conflict between the Suadi Arabian legal system and Saudi Arabia's adoption of the New York Convention. The author recognizes that the current New York Convention permits countries to give the appearance of embracing the international community, while permitting the country to reject arbitral awards that are contrary to its public policy. The author recommends a modification to the New York Convention that will prevent countries from circumventing the New York Convention's objectives and promote a uniform set of rules governing non-domestic arbitral awards.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: INT'L.

Rubin, Mark S.. "The validity of foreign arbitration clauses in bills of lading governed by the COGSA"(Carriage of Goods by Sea Act). Tulane Maritime Law Journal; Summer, 1995; 19(2): pp. 499-512.
Article discusses the case of Vimar Seguros y Rea Seguros, S.A. v. M/V Sky Roefer, wherein the court balanced the effect on an arbitration clause contained in a bill of lading with the requirements of the Carriage of Goods by Sea Act (COGSA). The First Circuit ultimately held that COGSA does not produce the enforcement of foreign arbitration agreements. Author examined, and ultimately agreed with, the court's analysis and reasoning.
SUBJ MATTER: INT'L/ SUBJ MATTER: COMMERCIAL.

Rubin, Michael H.. "The ethics of negotiations: are there any?" Louisiana Law Review. Winter, 1995, 56(2): pp. 447-476.
Article addresses the professional ethics of negotiations. Author contends that lawyers should abide by the same ethical standards in negotiations as in litigation, even though not required to do so by the Model Rules and Model Code. Author states that the fact that the bar has failed to adopt the same rules for negotiations as for litigation is not a distinction of which practitioners should be proud.
NEG: TACTICS, STRATEGIES AND TECHNIQUES- GENERAL.

Russell, Newton R.. "Mediation: the need and a plan for voluntary certification." (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring 30(3): pp. 613-16.

Article discusses the problems of not having uniform standards for mediators. The author explains his view of the necessary standards through a bill that he wrote. In this bill, Senate Bill 1428, he lays out the basic training and experience needed for mediators to become certified and also specified certain requirements which new training providers would have to meet in order to apply and be permitted to issue certificates. Author urges legislature to come together and address this important issue to allow people a level of confidence when selecting a mediator.
MED: RELATED PROCESSES-GENERAL.

Rutherford, Margaret. "Fair, speedy and cost effective resolution of disputes." Solicitors Journal. February 23, 1996, 140(7): pp. 170-71.
Article analyzes the main provisions of the Arbitration Bill. Author discusses why the Bill was needed and then looks at some of the important provisions of the Bill in more detail. Author summarizes provisions of the Arbitration Bill relating to: the form of the arbitration agreement, the status of the arbitrator, procedure, the court's role, and other miscellaneous issues. Author concludes that the Arbitration Bill is an excellent and welcome Bill, meeting a recognized need, and author encourages the Bill's speedy passage into law.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: INT'L.

Sachs, Keith L.. "Waters v. Churchill: Personal grievance or protected speech, only reasonable investigation can tell - the termination of at-will government employees". New England Law Review; Spring, 1996; 30(3): pp. 779-842.
Discusses the formulation of free speech protections for government employees through U.S. Supreme Court decisions. Author discusses the Court's ruling in the Waters case that held that facts necessary to determine whether a government employee's speech was protected may be provided by the employer, and not necessarily by a neutral factfinder.
SUBJ MATTER: GOV'T/ SUBJ MATTER: PUBLIC UTILITIES/ REQUIREMENTS: STATUTORY OR RULES.

Sackville, Justice Ronald. "Address Given by Justice Ronald Sackville at the Lunch of LEADR/LBC Australasian Dispute Resolution Service." Australian Dispute Resolution Journal. May, 1996, 7(2): pp. 153-156.
Speaker briefly discusses the emergence of ADR in Australia. He calls for the recognition that litigation and dispute resolution are not alternative to each other, but are complements that intersect.
SUBJ MATTER: INT'L.

Sagers, Christopher L.. "Due process review under the Railway Labor Act." Michigan Law Review. November, 1995, 94(2): pp. 466-487.
Article summarizes judicial treatment of the Railway Labor Act (RLA), which requires that certain employment disputes in the railroad and airline industries be settled by the RLA arbitration process. Author notes that judicial review of RLA arbitration awards is narrow but that the due process prohibition in the Act is constitutional. Author concludes that restricting judicial review in favor of the procedures mandated by the Act serves the need of the government to delegate decisionmaking authority to agencies.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Salem, Peter and Ann L. Milne. "Making mediation work in a domestic violence case." Family Advocate. Winter, 1995, 34(5): pp. 34-38.
Article discusses the debate over mediation in domestice abuse cases. Author examines whether the use of practice of meditation and the principles of victim advocacy are in conflict. In concluding the author suggests that attorneys before suggesting mediation to their clients should examine if mediation is the most appropriate dispute resolution option.
SUBJ MATTER: FAMILY (DOMESTIC REL).

Salmon, Peter. "Why choose Mediation?" New Zealand Law Journal. January 1996,: PP. 7-8.
The article explains the usefulness of mediation as a technique for resolving disputes. In addition, the article describes the differences of mediation versus formal arbitration. The author emphasizes the need for both parties to have openness. However, he warns against abusing the system as a means of discovery.
MED: RELATED PURPOSES- THEORY AND STRATEGIES.

Sanborn, Jeffrey A.. "The rise of 'shareholder derivative arbitration in public corporations: In Re Salomon Inc. shareholders' derivative litigation." Wake Forest Law Review. 1996, Spring, 31: pp. 337-367.
Article reviews shareholder derivative actions against public corporations in arbitration. Author reviews In Re Salomon, Inc., Fe. Sec. L. Rep. (CCH) 98, 454 (S.D.N.Y. Sept. 30, 1994)which held that only the corporation and its fiduciaries, not the corporation's shareholders, need be parties to an arbitration agreement covering derivative claims. Author supports the holding and adds that management can direct shareholder derivative claims into arbitration forums quite easily and with little expense if charter amendments and shareholder voting is not required.
SUBJ MATTER: CORPORATE.

Sanchez, Valerie A.. "Toward a history of ADR: the dispute processing continuum in anglo-saxon England and today." Ohio State Journal on Dispute Resolution. 1996, Winter, 11: pp. 1-39.
Author reveals the results of her study which reviews alternative dispute resolution techniques used during the Anglo-Saxon period in England (600 A.D. to 1066 A.D.). Article states that arbitration and mediation were used during this time period, and in fact arbitration was a useful alternative to adjudication. Author concludes by examining the development of Anglo-Saxon dispute resolution to that of the current development of the multidoor courthouse environment.
COMPARISONS: HISTORICAL.

Sands, John. "Alternative to what?: primary conflict management--the new fact of alternative dispute resolution." St. John's Journal of Legal Commentary. Summer, 1995, 10(3): pp. 603-611.
Author criticizes alternative dispute resolution because litigation should be the alternative to other primary methods of solving disputes. He proposes that conflicts should be reconciled before they develop into full-blown disputes. Author suggests that the term "primary problem solving" or "primary conflict management" should be used instead of the term "alternative dispute resolution." He concludes by noting that employment lawyers should implement problem solving mediation requirements into employment contracts.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Sawyer, Lauri Washington. "Allied-Bruce Terminix Companies v. Dobson: The Implementation of the Purposes of the Federal Arbitration Act or an Unjustified Intrusion into State Sovereignty?" Mercer Law Review. 1996, 47(2): pp. 645-654.
Article focuses on the Supreme Court's decision in Terminix and explores the ramifications of the Court's holding along with the application of the Federal Arbitration Act (FAA). The article asserts that although the Court's holding in Terminix may in fact have preempted state substantive law, the very same decision can increase the use of arbitration clauses.
SUBJ MATTER: LABOR-GENERAL/ SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Savage, David G.. "Out of the extraordinary: Supreme Court creates key precedents even on 'routine' business issues." ABA Journal. March, 1995, 81: pp. 42-44.
The author reviews the Supreme Court cases decided on January 18, 1995. The author highlights the case of Allied-Bruce Terminix Co. v. Dobson because it is likely to have a significant impact on the continuing growth in the use of arbitration to resolve legal disputes. The Supreme Court gave the

Federal Arbitration Act a broad reading, stating that the act validates all arbitration agreements "involving commerce," no matter how local the matter. The act does not require that substantial interstate activity be involved. The author notes that Justices Thomas and Scalia dissented because they were disturbed by what they viewed to be a federal intrusion into state territory.
ARB: BINDING ARB- GENERAL.

Schoenfield, Nichol M.. "Turf battles and professional biases: an analysis of mediator qualifications in child custody disputes." Ohio State Journal on Dispute Resolution. Spring, 1996, 11(2): pp. 469-487.
Note examines the problem of who should conduct voluntary and compelled mediation in resolution of child custody disputes. The strengths and weaknesses of three approaches are discussed: attorney-conducted mediation, mental health professional-conducted mediation and interdisciplinary team-conducted mediation. Conclusion reached is that interdisciplinary team mediation is preferred in theory, despite being the most expensive and difficult to implement. When cost and ease of implementation are considered, the author suggests that the qualifications of the mediators may possibly be of less importance, given that volunteer laypersons may be just as effective while more cost-effective.
SUBJ MATTER: FAMILY (DOMESTIC REL).

Schroeder, Wayne B.. "New rules (revised) for negotiating Superfund settlements". Colorado Lawyer; May, 1995; 24(5): pp. 1069-1070.
Article reviews recent case law regarding how consent decrees between a potential responsible party (PRP) and the EPA affect future claims by other companies seeking contribution from the PRP. Author reviews the Tenth Circuit's second opinion in United States v. Colorado & Eastern Railroad Co., Inc., and finds that it affords settlors the opportunity to proceed on a contribution claim against nonsettlors, if they have not obtained contribution protection.
SUBJ MATTER: ENVIRONMENT.

Schultz, Jennifer.. "The GATT/WTO Committee on trade and the environment - toward environmental reform." American Journal of Internation Law. April, 1995, 89(2): pp. 423-439.
Article discusses the environmental questions raised in the Uruguay round of the General Agreement on Tariffs and Trade (GATT) and submits additional trade and environmental topics to be considered. Author analyzes the creation of the World Trade Organization (WTO), technical barriers to trade, sanitary and phytosanitary measures agreements. which in her view emulate those reached in the North American Free Trade Agreement (NAFTA). Environmental subsidies, dispute settlement and

public participation are also discussed by the author. The author suggests procedural reform to GATT and WTO, the protection of international environmental agreements, setting guidelines for control of domestically prohibited goods, eco-labeling and using trade to protect bio-diversity. She finalizes by proposing the use of investment to encourage environmental enforcement and reform.
SUBJ MATTER: INT'L.

Schuyler, Nina. "Coercive harmony: an anthropologist and a former federal judge debate the purpose of mandatory ADR" (alternative dispute resolution) (Panel Discussion). California Lawyer; May, 1995; 15(5): pp. 37-41.
Article documents debate between Laura Nader, professor of anthropology at University of California Berkeley and opponent of mandatory ADR, and retired federal judge Hon. Charles B. Renfrew, proponent of broad use of ADR. Article addresses issues of origins of ADR movement, factors driving ADR movement, types of cases most affected by ADR, effect of ADR on rule of law and legal rights of parties and the role of mandatory mediation or arbitration.
SUBJ MATTER: GENERAL.

Schuyler, Nina. "Expensive cost cutting: mandatory arbitration clauses may cut litigation costs, but at what expense?". California Lawyer; January, 1995; 15(1): pp. 37-38.
This "Corporate Counseling" column discusses concerns being raised regarding the fairness of requiring employees to sign mandatory arbitration clauses as a condition of employment. The author contends that compulsory arbitration does not provide justice for employees and may generate its own costs in the form of employee alienation and lowered productivity. The article discusses recent court challenges to mandatory arbitration and recent (unsuccessful) efforts in Congress to prevent compulsory arbitration in claims arising under the Americans With Disabilities Act.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: LABOR-GENERAL/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Scodro, Michael A.. "Arbitrating novel legal questions: a recommendation for reform." Yale Law Journal. May, 1996, 105(7): pp. 1927-1961.
Note reviews the current rise in the use of Federal Arbitration Act (FAA). Author discusses the potential injustice in the arbitration process where arbitrators solve novel legal questions involving federal statutory claims. He suggests that arbitrators should certify novel questions to federal courts, rather than deciding the issues themselves.
COURT REFORM.

Serventy, Natasha. "Crime, shame and ritual re-integration: a new model of victim/offender reconciliation." (Wagga Wagga model) (New South Wales). Australian Dispute Resolution Journal. November, 1995, 6(4): pp. 274-83.
Article summarizes and analyzes the New South Wales reconciliation conference, a police-administered program whereby non-indictable juvenile criminal offenders and their victims meet, along with people from their "communities of interest." Author explores the theoretical background of the reconciliation conference, noting that it has much in common with alternative dispute resolution processes although there is no real dispute to be resolved. Author concludes that the conference is powerful and effective in reducing juvenile crime.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: CRIMINAL.

Shade, Joseph. "Mediation of Industrial Commission Cases" Campbell Law Review. Summer, 1995, 17: pp. 395-412.
Article examines mediation in workers' compensation claims in North Carolina. Author describes the mediation issues that accompany industrial commission cases. Author recognizes the inherent problems with mediating injured workers' claims-workers sometimes settle for small amounts. Author concludes that settlement by mediation lessens tensions and the high cost of litigation.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: LABOR-GENERAL.

Shade, Joseph. "The Oil & Gas Lease and ADR: A Marriage Made in Heaven Waiting to Happen." Tulsa Law Journal. Summer, 1995, 30: pp. 599-655.
Article advocated using ADR to resolve disputes between lessors and lessees under oil and gas leases. Author examines the special nature of the relationship between lessors and lessess in oil and gas, in which disputes often arise over differing goals. Author suggests a compulsory ADR clause in leases, because ADR can foster the lessor and lessee relationship.
SUBJ MATTER: PUBLIC UTILITIES/ ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Sharpe, Calvin William. "The art of being a good advocate." Dispute Resolution Journal. January, 1995, 50(1): pp. 60-62.
Article presents a primer for arbitration advocates to follow. Author emphasizes major points of good arbitration advocacy. Author highlights: a persuasive opening statement, avoidance of unnecessary delay, attention to evidentiary matters and thorough pre-hearing preparation.

ARB: PREPARATION/ ARB: CLIENT REP.

Shell, Richard G.. "The trade stakeholders model and participation by non-state parties in the World Trade Organization." University of Pennsylvania Journal of International Economic Law. 1996- Spring, 17(1): pp. 359-81.
Article is a critique on Professor Nichol's view of putting non-trade experts on selected World Trade Organization dispute panels and other suggested reforms. The author reiterates his thesis that the WTO must accommodate a broader group of interested parties to achieve compliance with its legal decisions. Author argues that unlike Nichols believes, the private days of trade adjudication and policy making are gone and for the trade industry to thrive, nongovernmental parties must be allowed to participate.
SUBJ MATTER: INT'L.

Shell, Richard J.. "Trade legalism and international relations theory: an analysis of the World Trade Organization." Duke Law Journal. March, 1995, 44: pp. 829-927.
Article evaluates the two new World Trade Organization (WTO) dispute resolution systems. Appellate body decisions, as well as decisions of dispute resolution panels that are not appealed, are binding unless all signatory states vote to overrule them. As a result, WTO dispute resolution decisions will automatically come into force as a matter of international law in every case. Author draws upon international relations, economic and legal theory in critiquing three competing normative approaches to the WTO dispute resolution system. Author concludes that the Regime Management Model-which emphasizes state standing, international law as a source of binding norms, and the mixed motives brought by states to trade systems-best explains the design of the WTO.
MED: RELATED PROCESSES-GENERAL/ ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: INT'L.

Sherowski, Elizabeth. "Hot coffee, cold cash: making the most of alternative dispute resolution in high-stakes personal injury lawsuits." Ohio State Journal on Dispute Resolution. Spring, 1996, 11(2): pp. 521-536.
Note argues for recognition of the potential effectiveness of and increased use of ADR in high-stakes personal injury claims, using Liebeck v. McDonald's Restaurants as an example where ADR could have worked. Application of ADR techniques such as mediation and negotiation is not recommended. Trial-like procedures such as summary jury trials and mini-trials are preferred in certain contexts, given that (1) there are often disparities between the parties involved, decreasing party agreement outside the trial-like structure; and (2) a high emotional component often renders traditional settlement negotiations unproductive.

SUBJ MATTER: OTHER TORTS.

Shipley, Marietta. "Family mediation in Tennessee" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 1085-1119.
Article discusses family mediation and describes its use in Memphis, Knoxville and Nashville, Tennessee. Author reveals results of a judicial survey of Tennessee judges concerning interest in and use of family mediation in those courts. Author notes criticisms of family mediation and suggest a future course to ensure the greatest possible success for this program in the years to come.
MED: ENCOURAGING COMM AND NEG/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Shoop, Julie Gannon. "ADR provider averts employment lawyers' boycott." Trial. April 1996, 32: p. 73.
Brief article reports the National Employment Lawyers' Association (NELA) decision not to boycott a major provider of ADR services. The boycott was averted after the company, JAMS/Endispute of California, pledged not to handle cases in which employers force workers to yield their legal rights. Article also reports NELA's approval of the new standard created by JAMS/Endispute.
INST NATURE: PRIVATE, PROFIT-MAKING.

shuquem, Darrien O.. "Has the California Supreme Court sanctioned perjury in private arbitration?" (Case note). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 861-90.
Article discusses the resulting abuse of extending the litigation privilege. Author asserts that the California Supreme Court in Moore has invited parties to. lie, by removing the threat of any resulting civil liability by making perjury a desirable and effective option for parties. Article examines the California Supreme Court's extension of privilege to private contractual arbitration.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Siegel, Todd M.. "Is arbitration final and binding? Public policy says, 'not necessarily!'" Journal of Dispute Resolution. 1995, Fall, 2: pp. 351-368.
Author examines the limited circumstance in which an arbitrator's decision can be vacated by a well defined public policy exception. Author explains this exception through an analysis of Exxon Shipping Company v. Exxon Seamen's Union, 11 F.3d 1189 (3d Cir. 1993). Case held that the public has a compelling interest in not being subjected to a potential danger of an intoxicated person operating a commercial vessel. Author provides a brief

history of the public policy exception and explains how it has been developed.
ARB: BINDING ARB- GENERAL.

Silberman, Honorable R. Gaull. "The interaction of the Americans with Disabilities Act and Alternative Dispute Resolution within the EEOC." St. John's Journal of Legal Commentary. Summer, 1995, 10(3): pp. 573-588.
Athous, a former EEOC commissioner, discusses the increase in EEOC claims due to the passage of the Americans with Disabilities Act (ADA) and the decrease in Congress's funding of the EEOC. Author briefly discusses the benefits of using ADR when resolving disability claims and failure to accommodate disability claims. Specifically, Author states that ADR offers a speedier, less confrontational and sometimes more effective means of resolving employment related disputes. Author proposes that ADA implementation can be enhanced by more widespread use of ADR between employers and employees within the EEOC.
SUBJ MATTER: CIVIL RIGHTS.

Simon, Ilan E.. "The eradication of the mistake of law doctrine in private sector arbitration" (Case note). Rutgers Law Review. Winter, 1996, 48(2): pp. 533-579.
Article explains the arbitration process using the American Arbitration Association's Commercial Arbitration Rules. Author traces history of private-sector arbitration in New Jersey, including the rise and fall of the mistake of law doctrine. Author notes that by eradicating this doctrine, the New Jersey Supreme Court restored the advantages of arbitration and protected the parties' reasonable expectations upon entering into an arbitration agreement.
NON-BINDING RECOMMENDATION PROC- GENERAL.

Singer, George H. . "Employing Alternative Dispute Resolution: Working at Finding Better Ways to Resolve Employer-Employee Strife." North Dakota Law Review. 1996, 72(2): pp. 299-324.
Article discusses legal and practical reasons for employers and employees to resort to alternative dispute mechanisms like arbitration. The article discusses the concepts of exclusivity, exhaustion, preclusion, enforcement of statutory claims, and judicial review. Using cases like Gilmer and Alexander as vehicles for the discussion, the article concludes by asserting that employment agreements providing for alternative methods of dispute resolution will continue to gain acceptance as a viable mechanism for avoiding costly litigation.
ECONOMIC ADVANTAGES OF ADR/ SUBJ MATTER: LABOR-GENERAL.

Single forum study (includes discussion). "New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry." Fordham Law Review. April, 1995, 63(5): pp. 1643-50.
Article discusses the single forum study that Securities Industry Conference [SICA] commissioned Coopers & Lybrand to complete. Panelist, Mr. Stuffenberg, reviews the data of the study addressing the viability and preferability of a single forum for arbitration cases. The study revealed that a single arbitration forum could provide improvements with respect to economic and service quality. However, the study demonstrated that the same improvements could be achieved by changing the delivery approach of individual forums.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: SECURITIES.

Singletary, Cary R., Robert A. Shearer, and Elaine M. Kuligofski. "Securing a durable mediation agreement to settle complex employment disputes." Labor Law Journal. April, 1995, 46(4): pp. 223-27.
Article analyzes commonly encountered issues in employment dispute resolution. Author discusses issue that the parties should address in an employment settlement agreement such as financial concerns, employee benefits, and attorneys' fees. Author suggest that parties create a comprehensive settlement agreement so that they can begin to put the dispute behind them.
MED: ENCOURAGING COMM AND NEG/ SUBJ MATTER: LABOR-GENERAL.

Slate, William K. II. "International arbitration: do institutions make a difference?" (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 41-64.
Author notes the various advantages of institutional arbitration overunadministered arbitration in the international context. Author discusses the conventions and institutions that have shaped international arbitration in its present form and suggests ways to improve their responsiveness to parties' needs.
SUBJ MATTER: INT'L.

Smeets, Maarten. "Tariff issues in the Uruguay Round; features and remaining issues." Journal of World Trade. June, 1995, 29(3): pp. 91-105.
Article discusses how the Uruguay Round negotiations reinvigorated tariffs as a trade policy instrument, highlighting key aspects of tariff negotiations. Author notes that the objective of the Uruguay Round was to reduce or

eliminate tariffs, including high tariffs and tariff escalation, explaining the importance of "binding" and its effect on the predictability of export environments, the difference between bound and applied rates, and elimination of duties for the achievement of free trade. Author concludes that the economic impact of tariffs has diminished but that tariffs have not become irrelevant as a barrier to trade because they contribute to the predictability of the multilateral trading system.
SUBJ MATTER: INT'L/ SUBJ MATTER: TAX/ NEG: W/ OR W/O ASSIST OF 3D PARTY NEUTRAL- ECONOMIC.

Smith, Aubry D.. "Executive-branch rulemaking and dispute settlement in the world trade organization: A proposal to increase public participation." Michigan Law Review. March 1996, 94(5): pp. 1267-1293.
Article suggests that while domestic policy making has traditionally been shared among the three branches of government and open to public scrutiny, the government of foreign affairs has tended to be concentrated in the Executive Branch and conducted in secrecy. However, with the rise in global interdependence, matters of domestic government and foreign affairs overlap and the domestic mode of government tends to give way to that of foreign affairs. Note argues that because the Executive Branch increasingly will be promulgating domestic regulatory rules intended to comply with the rules of the world-trading system, it is necessary to increase formal oversight of the Executive Branch's role in that context.
INST NATURE: GOV'T ENTITIES.

Smith, Dale T.. "We can settle this here or downtown: mediation or arrest for domestic violence calls?" Journal of Dispute Resolution. 1995, Fall, 2: pp. 383-435.
Article examines the policies of arrest or mediation in domestic violence disputes through an analysis of Eagleston v. Guido, 41 F.3d 865 (2d Cir. 1994). Author studies the potential liabilities under 42 U.S.C. sec. 1983 of either decision. Author discusses whether the police, the department or the city is responsible when a policy is deemed inadequate or a victim does not receive proper protection.
SUBJ MATTER: FAMILY (DOMESTIC REL).

Smith, James E.. "Are we protecting the past? Dispute settlement and historical property preservation laws". North Dakota Law Review; Fall, 1995; 71: pp. 1031-1065.
Article focuses on North Dakota's historical property preservation law, discussing whether or not the statute's arbitration review process for alteration and demolition requests is effective to balance the competing interests of both progress and preservation. Author contends that the use of arbitration to review requests is inappropriate because of the inherent nature

of such disputes and the lack of expertise of arbitrators regarding preservationist issues. The author concludes that only an administrative review system in conjunction with the state's Historical Preservation Officer would provide the requisite level of expertise to make the review process more efficient.
ARB: BINDING ARB- GENERAL.

Snider, Judity A. and C. Kemm Yates. "Alternative dispute resolution: use and abuse of information and specialized knowledge". Alberta Law Review; April, 1995; 33(2): pp. 301-341.
Article examines the subject of Alternative Dispute Resolution (ADR) with a focus on the issue of specialized knowledge and is use in two particular spheres of ADR: regulator tribunals and arbitration. The authors define "specialized knowledge" and compare it to the concept of evidence in order to determine whether it is evidence which can be relied upon by regulators and arbityrators in the context of their ADR decision-making. The relationship between specialized knowledge and the rules of natural justice is explored - in particular, the "audi alteram partem" rule and the rule against bias. The authors conclude by suggesting guidelines to be used by arbitrators and regulatory tribunals in adjudication on matters before them in order to avoid challenges, by judicial review, to their decision on the basis of missues of abuse of their specialized knowledge.
SUBJ MATTER: GENERAL.

Snider, Marshall A.. "Alternative dispute resolution meets the administrative process". Colorado Lawyer; July, 1995; 24(7): pp. 1549-1550.
Article describes the application of alternative dispute resolution to the administrative process by focusing on various legislative initiatives. The process of resolving license disciplinary and denial cases in Colorado and the process of the Division of Administrative Hearings as related to alternative dispute resolution are explained. Author presents information regarding the pilot mediation program in all cases of license discipline or denial.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: GOV'T.

Song, Kevin Ying Yue. "How to prepare and conclude an arbitration agreement". East Asian Executive Reports; October 15, 1995; 17: pp. 17-21.
Author provides advice on how to effectively construct and arbitration agreement, allowing parties who may become involved in commercial disputes concerning foreign parties to take advantage of the arbitration process. Article provides different forms of arbitration agreements, asserts

what language should be included in each, and provides several examples of arbitration agreements used by the Chinese.
SUBJ MATTER: INT'L/ ARB: DRAFTING ARB AGREEMENT.

Speigelman, Paul J.. "Certifying Mediators: using selection criteria to include the qualified lessons from the San Diego experience." (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 677-721.
Article discusses Senate Bill 1428 and its strengths and weaknesses suggesting that some of its provisions should be considered in the next bill written or judical attempt at formulating standards for the qualifications of mediators. Author also explores what he feels to be a serious threat to the mediation market-- which is allowing only lawyers to mediate. Author hopes the court will resist the temptation of restricting the role only to lawyers.
MED: RELATED PROCESSES-GENERAL.

Spencer, Janet M.. "Clearing the docket: alternative dispute resolution under the Americans with Disabilities Act." (Civil Rights for the Next Millennium: Evolution of Employment Discrimination Under the Americans with Disabilities Act). St. John's Journal of Legal Commentary. Summer, 1995, 10(3): pp. 589-590.
Author briefly states that in addition to Congressional policy, other factors exist in favor of using Alternative Dispute Resolution to resolve disputes arising under the Americans with Disabilities Act. Author states that ADR offers to find a mutually agreeable method to resolve disputes between employees and employers.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS).

Spizman, Lawrence M.. "The defense economist's role in litigation settlement negotiations". Journal of Legal Economics; Fall, 1995; 5: pp. 57-65.
Article examines how the use of an economist can affect both the defense's litigation strategy and the settlement negotiation process. Author considers the many positive influences that a defense economist has on the parties, including the encouragement of truth-telling and the deterrence of damage exaggerations. The author concludes that the presence of the defense economist facilitates more honest and productive pretrial negotiations, which in turn increases the probability of reaching a settlement.
SUBJ MATTER: GENERAL.

Stanley, Cynthia. "The aaa's large, complex case program." Res Gestae. April 1996: pp. 25-29.

Article discusses the ramifications of the use of the AAA's Large Complex Case Program (LCCP) in Indiana, which commenced in October, 1994. The key elements of the LCCP are discussed. Additionally, data is provided on the types of claims handled by LCCP and the method by which disputes may be referred to the LCCP program.
INST NATURE: JUSTICE SYSTEM-OTHER.

Stanley, Cynthia S.. "The arbitration alternative." Res Gestae. June, 1995, 42(2): pp. 37-40.
Article gives concise but basic overview of factors to consider when deciding whether or not to use arbitration rather than use the traditional court system. Author mentions both the benefits and the drawbacks to use of arbitration. Author also describes the Indiana Uniform Arbitration Act and Indiana's ADR Rule, both of which allow the choice of binding or non-binding court-annexed arbitration. Author concludes by listing options for parties when attempting to locate an arbitrator.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ NON-BINDING RECOMMENDATION PROC- GENERAL.

Stanley, Cynthia S.. "Preparing witnesses for arbitration". Res Gestae; October, 1994; 39: pp. 33-34.
Article compares the arbitration process to that of litigation and describes the manner in which witnesses should be prepared for an arbitration hearing. Author also elaborates upon the arbitration process and how that process should control how an individual is prepared for hearing.
ARB: PREPARATION/ ARB: CLIENT REP.

Stara, Nancy J. and Edward J. Schnee. "Maximizing deductions when acquiring real property leases". The Tax Adviser; March, 1996; 27(3): pp. 166-71.
Article examines the tax planning opportunities provided by the acquisition of real property leases. Author discusses how the changes enacted by the Revenue Reconciliation Act of 1993, as well as recent cases and rulings, have affected the deductions associated with the acquisition of real property leases. Author argues that maximizing these deductions depends upon how adjusted basis is allocated to assets, whether an acquisition is made by a lessor or lessee, and whether assets and payments are properly classified.
SUBJ MATTER: TAX.

Stark, Charles. "Antitrust in the international business environment." New York University Journal of International Law and Politics. Spring, 1995, 27(3): pp. 659-666.
Article provides a concise summary of development of the law in the area of international enforcement of antitrust laws and discusses the role of

government enforcement policies. Author notes ways in which government-initiated litigation differs from privately initiated litigation. Author proposes that the International Antitrust Enforcement Assistance Act of 1994 will provide for the first time a regular and ongoing antitrust enforcement for countries sharing a belief in open and competitive markets.
SUBJ MATTER: ANTITRUST.

Stempel, Jeffrey W.. "Reflections on judicial ADR and the multi-door courthouse at twenty: fait accompli, failed overture, or fledgling adulthood?". Ohio State Journal on Dispute Resolution; Spring, 1996; 11(2): pp. 297-395.
Article discusses issues surrounding "ADRization" of traditionally judicial activity. Author concludes that the most pronounced error of the modern ADR movement in the judiciary has been its focus upon advancing settlement qua settlement rather than providing "semi-adjudicatory options" in addition to full-dress trial and settlement initiatives.
COURT REFORM.

Stephens, Arlus J.. "The Sixth Circuit's approach to the public-policy exception to the enforcement of labor arbitration awards: a tale of two trilogies?". Ohio State Journal on Dispute Resolution; Spring, 1996; 11(2): pp. 441-468.
Article examines the Lincoln Mills and Steelworkers Trilogy cases and the LMRA. Author examines how Sixth Circuit has interpreted the public policy exception and how its view fits within the broader debate over the permissible scope of this review. Author argues Sixth Circuit's basis for public-policy jurisprudence coincides with developments in law surrounding arbitration under FAA.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Stevenson, Sandra M.. "...And beyond: reengineering with ADR - a symposium retrospective". (Symposium on Business Dispute Resolution: ADR and Beyond). Albany Law Review; SPRING, 1996; 59(3): pp. 977-89.
Article compares the traditional reluctance of the legal profession to reform itself with the willingness of other sectors of the economy such as business, education and government, to increase their efficiency by reengineering/redesigning themselves. Author notes the pressures on law firms to reengineer themselves and comments on the benefits ADR can offer to accomplish this goal.
ECONOMIC ADVANTAGES OF ADR/ ROLE OF LAWYERS.

Stewart, David O.. "Outcomes without trials: Supreme Court decisions add to rules on out-of-court case resolutions." ABA Journal. June, 1995, 81: pp. 48-51.
Article discusses four Supreme Court decisions addressing the ramifications of arbitration clauses in contracts, civil settlements, and plea bargaining. Author provides concise summary of the main issues in (1) Allied-Bruce Terminix Cos., Inc. v. Dobson (Court held that Federal Arbitration Act coverage of transactions "involving commerce" prevents state courts from hearing disputes covered by an arbitration agreement); (2) Mastrobuono v. Shearson Lehman Hutton, Inc. (Court upheld award of punitive damages in securities arbitration; (3) U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership (Court held that action of vacatur for unfavorable decisions in lower court is not available on appeal when parties settle, making the case moot); and (4) United States v. Mezzanato (Court held that criminal defendant may waive right to have excluded from trial any statements made during plea discussions granted by Fed. R. Evid 410 and Fed. R. Crim. Pro. 11(e)(6)). Author does not critique any of the decisions, rather he simply provides brief synopses of the cases.
ARB: JUDICIAL REVIEW/ INST NATURE: JUSTICE SYSTEM- CRIM COURTS/ SUBJ MATTER: SECURITIES.

Stipanowich, Thomas J.. "Beyond arbitration: innovation and evolution in the United States construction industry". (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 65-182.
Author examines traditional alternatives to litigation used by the construction industry, including summary adjudication by design professionals, arbitration, mediation, minitrial, dispute review boards, early neutral evaluation, and partnering. Author analyzes results from the 1991 ABA-sponsored survey on dispute resolution in the construction industry and the 1994 Multidisciplinary Study on Dispute Avoidance and Resolution in the Construction Industry. Author concludes that the construction industry will likely continue to serve as a proving ground for new methods of consensual conflict resolution.
SUBJ MATTER: CONSTRUCTION/ ECONOMIC ADVANTAGES OF ADR.

Stokeld, Fred. "IRS urged to broaden proposed mediation program." Tax Notes. February 27, 1995, 66: pp. 1234-1235.
Article provides a summary of testimony before an IRS panel concerning the Service's proposal to allow mediation to settle taxpayer disputes. Article reports that all of the witnesses testified favorably concerning the proposal, arguing that mediation would save time and money and spare many taxpayers from arduous litigation. Article reviews various arguments

concerning specific guidelines and requirements of the proposal including who may mediate, whether a minimum tax liability threshold should be imposed and whether the IRS should establish time limits on the mediation.

Straight, Samuel C.. "GATT and NAFTA: marrying effective dispute settlement and the sovereignty of the fifty states." Duke Law Journal. October, 1995, 45(1): pp. 216-254.
Article focuses on sovereignty issues that arise when the laws of one of the fifty states conflict with obligations arising from international trade agreements and international trade dispute settlement bodies. The article begins by discussing the dispute resolution procedures of the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA). After discussing how these trade agreements may affect state sovereignty, the article asserts that the dispute resolution procedures under both agreements include safeguards sufficient to protect state sovereignty interests.
INST NATURE: GOV'T ENTITIES/ SUBJ MATTER: GOV'T/ LEGISLATION.

Stratton, C. Bruce. "Alternative dispute resolution" (The 74th Texas Legislative Session: An Overview). Texas Bar Journal. October, 1995, 58(9): pp. 896-900.
Author reviews changes made to alternative dispute resolutions laws in the state of Texas during the 74th Texas Legislative Session. Author analyzes those changes made by the legislature.
SUBJ MATTER: GOV'T.

Stratton, Sheryl. "Appeals officials outline dispute resolution options". Tax Notes; February 26, 1996; 70(10): pp. 1218-19.
Article summarizes the issues discussed at the February 20, 1996 meeting of the Washington, D.C. Bar Tax Section's Tax Audits and Litigation Committee, where Vincent Canciello, IRS National Director of Appeals, and Thomas C. Louthan, director of the IRS's Office of International, TEFRA & Dispute Resolution Programs, touted new dispute resolution initiatives aimed at reducing the time that large cases languish in appeals. Author discusses several new programs highlighted by the IRS officials, including: the early referral of issues from examination to appeals, a competent authority-simultaneous appeals review, and the mediation test procedure.
SUBJ MATTER: TAX/ MED: RELATED PROCESSES-GENERAL.

Stratton, Sheryl. "Competing interests snag APA program guidance. Tax Notes. January 8, 1996, 70(2): pp. 138-140.

The article discusses the APA (Advanced Pricing Agreement) program, the IRS's dispute resolution project that has been out of view despite its successes. The reasons for the APA being out of view is that the IRS has been forced to balance dual competing interests, the taxpayer's confidentiality with explaining to the public how the program is administered. The APA has helped companies and the IRS to agree to transfer pricing methodology for tax purposes.
SUBJ MATTER: TAX/ MED: NEGOTIATED RULE-MAKING.

Suviranta, Antti. "Worker Privacy in Finland" (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators. Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 46-60.
Article provides an overview of the growing sensitivity toward and consequent efforts to enhance protection of worker privacy rights in Finland. Author reviews legal developments related to regulation of both off- and on-the-job conduct, such as personal appearance, solicitation, alcohol and tobacco use and sex-related issues. Author describes the collection, maintenance and preservation of health- and non-health data about employees and their family members. Author reports acceptable forms of investigation and surveillance.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Swanson, Elizabeth J.. "Alternative dispute resolution and environmental conflict: the case for law reform." Alberta Law Review. October, 1995, 34(1): pp. 267-78.
Author discusses trend of alternative dispute resolution (ADR) use in environmental disputes. Author then examines ADR legislation in Canada and argues for an institutional-based system of ADR. Author reviews two types of ADR-legislation and concludes with recommendations for ADR/environmental law reform initiatives.
SUBJ MATTER: ENVIRONMENT.

Swier, Scott R.. "The tenuous tale of the terrible termites: the Federal Arbitration Act and the court's decision to interpret Section Two in the broadest possible manner: Allied-Bruce Terminix Companies, Inc. v. Dobson". South Dakota Law Review; Spring, 1996; 41(1): pp. 131-165.
Article examines Supreme Court ruling that held the interstate commerce language of the FAA should be interpreted broadly. Author discusses the history, scope and development of the FAA. Author presents the standards for determining whether activity constitutes interstate commerce under the FAA and concludes that the COURT was wrong in extending the FAA's scope.

ARB: MANDATORY, COURT-ANNEXED- GENERAL/ COMPARISONS: HISTORICAL/ LEGISLATION.

Tanimoto, Hironori. "Sources of law relating to maritime arbitration in Japan." Journal of International Arbitration. March, 1995, 12(1): pp. 101-111.
The author discusses arbitration procedure by referring to court precedents in Japan and to the arbitration rules of the Tokyo Maritime Arbitration Commission of the Japan Shipping Exchange, Inc. (the TOMAC Rules). Because the legal system is general and comprehensive, permanent arbitration organizations have established arbitration rules which are supported by the legal decisions. The author proposes that Japan have an independent arbitration law because the country's involvement in international trade.
ARB: OBTAINING AND ENFORCING AGREEMENT TO ARB/ SUBJ MATTER: INT'L.

Tavender, E. D.D.. "Considerations of fairness in the context of international commercial arbitrations". Alberta Law Review; May, 1996; 34(3): pp. 509-556.
Article provides exposition on procedural rules of commercial arbitration in various jurisdictions. Author contends that procedural rights in international arbitration vary in extremes among jurisdictions. Author concludes by suggesting international arbitration agreements contain procedural requirements in order to combat uncertainty.
SUBJ MATTER: INT'L/ ARB: DRAFTING ARB AGREEMENT.

Taylor, Susan C.. "Victim-offender reconciliation program - a new paradigm toward justice.". The University of Memphis Law Review. Spring 1996, 26(3): pp. 1187-95.
Article explains the history and the primary purpose of VORPs to provide direct encounters between criminal offenders and crime victims in an effort to make the offender personally accountable for their actions. Article explains how VORPs operate procedurally. Author concludes that VORP mediation is beneficial for all involved parties because disputes are resolved in a nonthreatening, nonpunitive atmosphere.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: CRIMINAL

Tennenbaum, Michael. "International arbitration of trade disputes in Mexico: the arrival of the NAFTA and new reforms to the Commercial Code." Journal of International Arbitration. March, 1995, 12(3): pp. 53-78.

Article provides an overview of how NAFTA and new reforms to the Commercial Code have affected international arbitration of trade disputes in Mexico. Author analyzes the effect of the 1993 reforms on the effectiveness of arbitration in Mexico. He concludes by examining the development of arbitral institutions in Mexico and in the United States.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: INT'L/ SUBJ MATTER: COMMERCIAL.

Thomas, Karina M.. "New rules for negotiating superfund settlements." Colorado Lawyer. February, 1995, 24(2): pp. 307-310.
Article discusses the ruling of the Tenth Circuit in United States v. Colorado & Eastern Railroad Co., which set out new limitations on private party cost recovery actions under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The ruling addresses: 1) the interaction between section 113 of CERCLA contribution actions, and 2) the scope of protection afforded by consent decrees regarding matters addressed in private party complaints. Author concludes that the case will affect practitioners' fundamental litigation strategy in that key decisions will have to be made concerning the type and timing of settlement negotiations with EPA and other defendants.

Tower, King. "'Cramdown' confirmation of single-asset debtor reorganization plans through separate classification of the deficiency claim - how in Re U.S. Truck Co. was run off the road." William and Mary Law Review. March, 1995, 36(3): pp. 1169-1201.
Article examines the Bankruptcy Code provisions related to single-asset reorganization plans. Author reviews case law addressing issues such as the rights of secured creditors, the classification of claims, and the confirmation and reorganization of plans. He weighs the outcomes of these cases in light of their policy ramifications.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- THEORY: GENERAL/ SUBJ MATTER: COMMERCIAL.

Trace, Karen. "The art of skillful negotiating." Alberta Law Review. October, 1995, 34(1): pp. 34-53.
Author outlines rationale of and skills involved in alternative dispute resolution (ADR). Author discusses theory of conflict and concludes that convergent negotiation is more efficient means to resolve disputes than traditional adversarial negotiation. Author then discusses several negotiation theories and reviews the processes and rationale involved in interest-based negotiations. Author outlines various skills and techniques of a successful negotiator and concludes with a complete framework for successful negotiations.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL.

Travers, Michael K.. "ADR: important options for municipal government." Colorado Lawyer. June, 1995, 24(6): pp. 1279-1280.
Article discusses the Colorado Judicial Department's long range strategic planning project, "Vision 2020: Colorado Courts of the Future." Author summarizes options for municipalities wishing to embrace ADR as part of their government, including (1) joining a program similar to the Colorado Pledge; (2) using/implementing ADR clauses in contracts; (3) initiating use of ADR in employment disputes, land use, real estate transactions, condemnation proceedings, annexations, environmental and natural resource issues, criminal offenses, nuisance actions, and neighborhood disputes; (4) implementing the use of ombudspersons, mediators, facilitators, or hearing panels, for disputes that arise within the municipal organization; (5) developing roles within the local community as mediators and reconciliators to resolve disputes to which the municipality itself is not a party (e.g. victim-offender mediation services); and (6) integrate ADR non-adversarial values to promote communication and a positive government-community culture. Author concludes that incorporation of ADR options into government will benefit both the municipal organization itself, the greater citizenry, and the community.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: COMMUNITY/ SUBJ MATTER: GOV'T.

Trevino Balli, Margarita and David S. Coale. "Recent reforms to Mexican arbitration law: is constitutionality achievable?" Texas International Law Journal. Summer, 1995, 30(3): pp. 535-558.
Article provides an overview of reforms of Mexican arbitration law that began in the mid-1970s and continue to this day. Authors discuss how the initial hostility toward arbitration in Mexico gave way to reforms. Authors propose changes to balance the reform movement with the traditional structure of the Mexican legal system. Authors urge an amendment to the Mexican Constitution to complete the reform while protecting against violations of individual rights.
ARB: BINDING ARB- GENERAL.

Trigoboff, Dan. "More states adopting divorce mediation: with nonlawyer mediators, some spouses will get bad deals, critics claim." ABA Journal. March 1995, 81: pp. 32-33.
The article discusses growing trend for offering court-annexed mediation programs for divorcing couples. The author recognizes that mediation may increase compliance with agreement. However, author also reports that mediators may not be experienced in family law and thus unable to assist with hidden assets and other financial issues. The author notes that in states that have adopted mediation programs critics have fallen by the wayside.

MED: ENCOURAGING COMM AND NEG/ MED: REP OF A CLIENT DURING PROCESS/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Trumble, Robert R. and Thomas T. Tudor. "Equitable collective bargaining through publicly accessible financial data." Journal of Collective Negotiations in the Public Sector. Spring, 1996, 25(2): pp. 89-98.
Article proposes that in order to optimize labor negotiations, union leaders should overcome the problem of receiving poor or no financial information from management by turning to publicly accessible financial data. Authors provide brief overview of what labor leaders must know to fully utilize financial data, including recognition of what data is needed and comprehension of how sata interrelates and the overall economic position for the country, specific industry and specific company. A basic overview of major resources where publicly accessible data may be found is presented.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Turner, Bruce and Robin Saunders. "Mediating a planning scheme amendment: a case study in the co-mediation of a multi-party planning dispute." Australian Dispute Resolution Journal. November, 1995, 6(4): pp. 284-96.
Article summarizes and analyzes the successful "Mediation Planning Pilot Project" initiated by the Victorian Department of Planning and Development in 1992. Authors explain the stages of the mediation process, as well as the agreement and the outcome. Authors conclude that mediation can work efficiently parallel to a formal panel hearing process; that the interests of all parties must be represented in a multi-party dispute; and that when it is impossible to resolve a value conflict, a dispute can nevertheless be settled if the conflict has been clearly identified.
MED: RELATED PROCESSES-GENERAL.

Turner, Ronald. "Compulsory arbitration of employment discrimination claims with special reference to the three A's - access, adjudication, and acceptability". (Business Law Symposium: Commercial Arbitration: A Discussion of Recent Developments and Trends). Wake Forest Law Review; SPRING, 1996; 31(1): pp. 231-95.
Compulsory arbitration to resolve statutory-based discrimination claims has come under increasing scrutiny because of concerns that it may deny access to the courts, destabilize consistent rules of adjudication, and result in final decisions unacceptable to both parties. Author analyzes the current state of the law in this area and proposes a consistent framework for arbitrators and parties to follow in the future.

ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: LABOR-DISCRIMINATION.

Vagts, Detlev F.. "The international legal profession: a need for more governance?" American Journal of International Law. April 1996, 90: pp. 250-61.
Article takes an inventory of international professional rules of conduct in an attempt to determine what, if any, further steps might be taken to create clearer rules in the field and make their enforcement more effective. Author concludes that there are many problems and uncertainties in this area especially with the increased growth of international tribunals. The creation of a new code of conduct for international public law institutions is advocated.
SUBJ MATTER: INT'L.

Van Engen, Brian K.. "Post-Gilmer developments in mandatory arbitration: the expansion of mandatory arbitration for statutory claims and the congressional effort to reverse the trend". The Journal of Corporation Law; Winter, 1996; 21(2): pp. 391-415.
Article focuses on compulsory arbitration and claims arising under anti-discrimination statutes in the individual employment context. Author discusses the current status of the law and the legislative measure introduced to curb the rising tide of arbitration of statutory discrimination claims. Finally, the note examines the adequacy of arbitration as an alternative forum.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ REQUIREMENTS: CONTRACTUAL CLAUSES.

Van Gelder, Michael A.. "Maritime arbitration: quo vadis? Have delays and costs caused us to lose the way?". Journal of International Arbitration; March, 1995; 12(1): pp.79-86.
The author details where the costs and delays occur in maritime arbitration. The author suggests how the disputing parties, legal counsel and arbitrators can decrease costs and delays in arbitration. The author reviews why parties select arbitration and proposes that the mediation process may also be successful in resolving disputes.
MED: ENCOURAGING COMM AND NEG/ ARB: PREPARATION.

Vause, W. Gary. "Public sector labor disputes - the mediative and legislative roles of the special master." Florida Bar Journal. April, 1995, 69(4): pp. 33-37.
Article discusses the role of the special master in Florida's public sector labor disputes. He sets out the difference in the role of the traditional arbitrator and the focus and purpose of the special master. The former is

adjudicatory in scope. The latter has a legislative function and arises when there is an impasse in negotiations and mediation has failed. The author recommends a process to make the system more efficient, including mediation training for the special master, at no cost to the special master and incorporating a tripartite panel which also represents the two other parties involved.
SUBJ MATTER: LABOR-GENERAL.

Vermulst, Edwin A. and Bart Driessen. "An overview of the WTO dispute settlement system and its relationship with the Uruguay Round Agreements". Journal of World Trade (Law-Economics-Public Policy); April, 1995; 29(2): pp. 131-161.
Article discusses the new rules which govern dispute settlement in the WTO system, and suggests that these rules will give the panel proceedings a more litigious flavor. Authors first remark on the WTO institutions involved in dispute settlement, then discuss the main changes to the dispute settlement process. Authors reflect on the nature of GATT/WTO dispute settlement and discuss the new Understanding on Rules and Procedures Governing the Settlement of Disputes. Authors conclude by praising the new, more formal rules, but also noting that the new system may be overly ambitious.
SUBJ MATTER: INT'L/ REQUIREMENTS: STATUTORY OR RULES.

Villa, Jennifer and Albert A. Blum. "Collective bargaining in higher education: prospects for faculty unions." Journal of Collective Negotiations in the Public Sector. Spring, 1996, 25(2): pp. 157-169.
Article looks at how restraints on professors' economic well-being, professional status and academic freedom may be alleviated in part through expansion of collective bargaining in academia. Brief overviews are presented of the history of unions in academia, legal considerations affecting unions and determinants affecting faculty voting behavior. The authors conclude that faculty unions have demonstrated beneficial effects on salary, working conditions, grievance procedures, political representation and university resource distribution. As restraints in academia further disturb traditionally passive faculty, the authors suggest, increased unionization may occur.
SUBJ MATTER: EDUCATION.

Vincent, Maggie. "Mandatory Mediation of Custody Disputes: Criticism, Legislations, and Support" (Note) Vermont Law Review. Fall, 1995, 20(1): pp. 255-97.
Note advocates mediation of child custody and visitation disputes. Author believes that mandatory mediation of such intensely personal disputes that often require continuing contact between divorced parents provides an answer to the inadequacies of adjudication. Author rebuts criticism from

women's advocates that mandatory mediation forces women, who are traditionally enculturated into less powerful positions in society and marriage, back into vulnerable positions as poorly grounded. Author contends that mediation must be mandatory to succeed because, inter alia, people generally lack familiarity with the process. Author advocates that legislation and other safeguards--training of mediators, screening of participants, protective procedures, and assurances of confidentiality--can counterbalance inherent inequities and preserve the safety of participants, even in abusive situations. Author suggests that the possibility of later adjudication offers additional protection.
MED: RELATED PROCESSES-GENERAL/ SUBJ MATTER: GENERAL/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Volz, Jane L.; Haydock, Roger S.. "Foreign arbitral awards: enforcing the award against the recalcitrant loser". William Mitchell Law Review; Spring, 1996; 21(3): pp. 867-940.
Article discusses the sources of international law as developed in various treaties, compares various nations' treatment of arbitral awards. Authors focus on the basics required to compel a foreign party to comply with a binding arbitral decision. Authors provide tips for U.S. businesses dealing with the recalcitrant loser of an arbitration award in most foreign nations.
SUBJ MATTER: COMMERCIAL/ SUBJ MATTER: INT'L/ SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD.

Wade, John. "Tools from mediator's toolbox: reflections on matrimonial property disputes." Australian Dispute Resolution Journal. May 1996, 7(2): pp. 157-159.
Author sets out systematic process for use in matrimonial property mediation. Author provides detailed examples of preparatory questions for advising and acting as mediator. Examples include: diagnoistic hypotheses on emotional and cognitive potential disputes, one-day model mediation, settlement decisions, and standardization of issues for needs and concerns. Author concludes planning mediation in matrimonial property disputes is essential for effective mediating.
MED: RELATED PURPOSES- THEORY AND STRATEGIES/ SUBJ MATTER: FAMILY (DOMESTIC REL).

Waelde, Thomas W.. "International investment under the 1994 Energy Charter Treaty: legal, negotiating and policy implications for international investors within Western and Commonwealth of Independent States/Eastern European countries". Journal of World Trade; October, 1995; 29(5): pp. 5-72.
Article examines the Energy Charter of 1994 which provides a significant potential for leverage by investors and companies when operating energy

investments in member states. Among the topics covered include the core obligations of member states regarding foreign investment; the Treaty's main investment provisions; and preliminary solutions to some of the Treaty's interpretation issues.
SUBJ MATTER: REGULATORY/ SUBJ MATTER: COMMERCIAL.

Wagar, Terry H., and Marie Chisholm. "Faculty attitudes toward union membership and strike action: evidence from two eastern" Canadian universities. Journal of Collective Negotiations in the Public Sector; Fall, 1995; 24(4): pp. 325-336.
Article reviews the results of a study of the attitudes of faculty members at two Canadian universities with respect to two issues-- the benefit of union membership and whether engaging in strike action is unprofessional. Authors examine the relationship between these two variables and demographic and psychological characteristics of the respondents. Authors report that union membership is generally viewed as beneficial although business and science faculty are less likely to favor union membership. Authors conclude that faculty who viewed collective bargaining as an effective means for meeting workplace goals were more likely to support the position that union membership is beneficial and it is not unprofessional to strike.
SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)/ SUBJ MATTER: EDUCATION.

Waldman, Ellen A.. "The challenge of certification: how to ensure mediator competence while preserving dignity." (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996- Spring, 30(3): pp. 723-56.
Article gives an overview of the Senate Bill 1428 and while it generally supports the credentialing enterprise, it concludes that any new proposed legislation must address the training and evaluation components of the credentialing process more comprehensively. Author also thoroughly discusses three distinct models that she feels mediation practice consist of, norm-generating, norm-educating, and norm-advocating and asserts her opinion of which models are appropriate for certain situations.
MED: RELATED PROCESSES-GENERAL.

Weckstein, Donald T.. "Mediator certification: why and how." (Includes proposed statute regulating certification) (Symposium: Certification of Mediators in California). University of San Francisco Law Review. 1996-Spring, 30(3): pp. 757-801.
Article explores the public interest in mediator certification, differentiates from occupational licensing and discusses the Senate Bill 1428. It demonstrates approval for some of the provisions, but suggests alternatives

to others which are incorporated into an Appendix at the conclusion of the article. Author cohesively summarizes debates on the issue of mediator certification.
MED: RELATED PROCESSES-GENERAL.

Weeks, John. "Procedures for dispute settlement under the World Trade Organization - GATT 1994 and under chapter 19 of the North American Free Trade Agreement." Hamline Law Review. 1995-Spring. 18(3): pp.343-46.
Article describes the procedures governing the settlement of disputes under GATT. Included is a description of how panels are appointed and their decisions enforced. It also discusses the standard of review to be applied by dispute settlement panels under NAFTA, and briefly notes the difficulty in appealing such decisions.
SUBJ MATTER: INT'L.

Weinstein, Jack B.. "Some benefits and risks of privatization of justice through ADR". Ohio State Journal on Dispute Resolution; Spring, 1996; 11(2): pp. 241-295.
Article discusses the importance of the courts as public centralized dispute resolution forums, and the threat posed by some forms of privatization of justice to substantive balues protected by courts. Author identifies areas appropriate for ADR and suggests ways the court system can better meet modern demands.
COURT REFORM.

Weinzierl, Michael E.. "Wisconsin's new court ordered ADR law: why it is needed and its potential for success." Marquette Law Review. 1995-Spring, 78(3): pp. 583-607.
This article traces the increasing need for litigation alternatives in both the federal and Wisconsin courts and focuses on Wisconsin's recently passed ADR law as it relates to civil, non-family litigation. The author describes the many ways in which ADR saves time, money, and is otherwise preferable to litigation. The author compares the effectiveness of court mandated ADR procedures in Florida and Illinois and argues that Wisconsin will similarly benefit from the use of the new comprehensive binding and non-binding settlement program.
NON-BINDING RECOMMENDATION PROC- GENERAL/ ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Weiss, Elliott J.. "Securities Act Section 12(2) after the Gustafson debacle". Business Lawyer; August, 1995; 50(4): pp. 1209-1229.
Article analyzes the Gustafson opinion and the impact of the Court's ruling. The various "safe harbor transactions" that occur in offerings covered by

Regulation D and sales covered under Rule 144 and Rule 144A are discussed. Author presents her theories relating to the status of a "failed" statutory private offering, the computation of damages in a section 12(2) action, and the determination of whether free writing constitutes a prospectus under section 12(2). It is suggested that the SEC should address Regulation D and Congress should regulate the computation of damages under section 12(2).
SUBJ MATTER: SECURITIES.

Weiss, Manfred, and Barbara Geck. "Worker Privacy in Germany (Worker Privacy: A Ten Nation Study by the Committee on International Studies of the National Academy of Arbitrators." Comparative Labor Law Journal. Fall, 1995, 17(1): pp. 75-90.
Article reviews the post-World War II development of the important, comprehensive right of privacy that now protects individuals in Germany. Authors describe the ability of employers to monitor or regulate employee behavior at work only with the cooperation of the works council and if justified by specific, urgent business needs. Authors report that the works council is also instrumental in preserving the strict confidentiality of data about health and other personal information. Authors relate that freedom of speech and freedom of conscience protect the opinions of employees and their right to refuse to perform tasks incompatible with the employee's conscience. Authors convey that freedom of association protects employees from limitations on conduct outside of the workplace and explain that law also protects job applicants from over-intrusive inquiries.
SUBJ MATTER: EMPLOYMENT (NON-UNIONS)/ COMPARISONS: CROSS-CULTURAL.

Welcoming Remarks (November 21, 1994). "New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry" (Transcript). Fordham Law Review. April 1995, 63(5): pp. 1505-06.
Article introduces the New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry. Bill Donaldson, Chairman of the New York Stock Exchange delivered the opening remarks. He hoped that the Symposium would provide insight to those dealing with arbitration in the securities industry.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: SECURITIES.

White, Penny J.. "Yesterday's vision, tomorrow's challenge: case management and alternative dispute resolution in Tennessee" (Alternative Dispute Resolution Symposium). The University of Memphis Law Review. SPRING, 1996, 26(3): pp. 957-974.
Article discusses changes implemented in Tennessee in response to thirty-month study of case management and ADR techniques which would aid in

securing the just, speedy and inexpensive determination of suits. Author notes Tennessee Rule of Civil Procedure 16 was amended to reflect the Federal Rule 16, authorizing trial judges to utilize a broad range of powers to expedite court proceedings. Author also discusses adoption of Tennessee Rule 31, authorizing use of various SDR methods as appropriate to the circumstances of each case.
INST NATURE: JUSTICE SYSTEM- GENERAL/ COURT REFORM.

White, Heather G.. "Including local communities in the negotiation of mining agreements: the OK Tedi example". Transnational Lawyer; Fall, 1995; 8: pp. 303-350.
Articles uses an Australian lawsuit by landowners near a mine in Papua New Guinea to illustrate the difficulties and tensions that arise between local indigenous populations in developing countries and the owners of natural resource exploitation projects. Author analyzes the need for the inclusion of local communities in the negotiating process as a primary means of avoiding future conflict and litigation in such circumstances, focusing on international law, pragmatic considerations and moral issues. The author concludes that by involving the local communities in the negotiations with both the resource corporation and the developing country's national government, many of the problems that eventually lead to lawsuits could be avoided entirely.
SUBJ MATTER: INT'L.

Whorton, Joseph. "The law lists." ABA Journal. June, 1995, 81: pp. 82-92.
Author compiles a number of experts' specific enumerated points of advice on how to confront a variety of practice issues. Topics include: (1) How to attract and keep clients; (2) How to use billing statements to increase client satisfaction and encourage prompt payment; (3) How to develop good relations with corporate counsel; (4) How to avoid isolation as a solo practitioner; (5) How to keep office staff on your team; (6) How to find answers in little-known research sources; (7) How to improve legal writing; (8) How to get the most from an opening statement; (9) How to control difficult witnesses; (10) How to be effective on cross-examination; (11) How to communicate with a jury; (12) When to use Alternative Dispute Resolution; (13) How to get the most from arbitration; (14) How to handle a criminal matter for a client while in a civil practice; and (15) How to set aside time for pro bono work. Each list provides clear, authoritative, and practical advice from which any practitioner can benefit.
SUBJ MATTER: GENERAL/ ROLE OF LAWYERS.

Wickes, Jack, Gary Price, and Brian Statz. "The effect of Austin Lakes Joint Venture v. Avon Utilities, Inc. on dispute resolution with regulated entities." Res Gestae. November, 1995, 39(5): pp. 19-27.
Article analyzes the effect of the Indiana Supreme Court's decision in Austin Lakes on alternative dispute resolution as a process available to parties that contract with a regulated entity. Authors explain that the decision grants trial courts power to decide whether cases should be heard by courts or agencies, and it implicitly might allow the parties to enter contractual agreements on methods of resolving their disputes. Authors conclude that the public, the parties and the agencies will benefit from the use of alternative dispute resolution in administrative law.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: REGULATORY.

Wigner, Preston Douglas. "The United States Supreme Court's expansive approach to the Federal Arbitration Act: a look at the past, present, and future of Section 2." University of Richmond Law Review. December, 1995, 29: pp. 1499-1553.
Author analyzes Section 2 of the Federal Arbitration Act, the substantive provision of the Act conferring jurisdiction for arbitration. The author notes with approval the recent Allied-Bruce Terminix Supreme Court case expanding the scope of the Act to the very limits of the Commerce Clause. Author contends that this expansion is in accord with the legislative intent surrounding the Act's original enactment, and will allow many more parties to use arbitration procedures rather than going through costly litigation procedures.
ARB: MANDATORY, COURT-ANNEXED- GENERAL.

Wilcots, Rosalyn L.. "Employee discipline for off-duty conduct: constitutional challenges and the public policy exception". Labor Law Journal; January, 1995; 46(1): pp. 3-16.
Article discusses the uncertainty surrounding an employer's right to require employee conformity with rules of conduct during off-duty hours, away from the place of employment. Author reviews and compares the outcomes of employee challenges to disciplinary actions initially filed in the courts with those resulting from review of arbitrators' decisions. She concludes that both types of challenges -- those brought in court based on constitutional claims and those brought before arbitrators based on collective bargaining agreements -- are difficult to sustain. She advises employers to tailor off-duty conduct rules to specific business interest and incorporate such rules into collective bargaining agreements with a high degree of specificity.
ARB: BINDING ARB- GENERAL/ SUBJ MATTER: LABOR-MANAGEMENT (UNIONS).

Winsom, Patricia Monroe. "Probate law and mediation: a therapeutic perspective." Arizona Law Review. Winter, 1995, 37(4): pp. 1345-1362.
Note discusses the problems with the current status of Arizona probate law regarding legal representation. Author examines Arizona's estate laws and the procedures and the impact on the parties involved in an estate. She proposes to add mediation to the Arizona estate system to make the process less harmful for the parties involved.
SUBJ MATTER: PROBATE.

Winston, David S.. "Participation standards in mandatory mediation statutes: "you can lead a horse to water . . .". Ohio State Journal on Dispute Resolution. Winter, 1996, 11(1): pp. 187-206.
Article discusses the benefits of mandatory mediation for litigants as well as the legal system. Author also notes, however, that uncertain participation standards such as "good faith" and "meaningful participation" have left many participants uncertain as to what constitutes satisfactory participation. Author proposes an objective standard for participation in mandatory mediation. Author suggests that parties be required to send a representative with authority to settle and to submit a statement outlining the parties' positions on the issues in dispute.
MED: RELATED PROCESSES-GENERAL.

Wolfe, Richard C.. "Negotiating and litigating music royalties." Florida Bar Journal. January, 1995, 69(1): pp. 56-59.
Article discusses recording industry practices for calculating musician, songwriter, and producer royalties. Author cautions those representing artists to be alert to and negotiate various issues in royalty agreements. Specific areas discussed include returned record reserves, distribution of "free goods" to radio stations and other customers and expense deductions against gross royalties.
NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL- GENERAL/ SUBJ MATTER: SPORTS & ENTERTAINMENT.

Woodley, Ann E.. "Saving the summary jury trial: A proposal to halt the flow of litigation and end the uncertanties." Journal of Dispute Resolution. 1995, Fall, 2: pp. 213-298.
Author provides an overview of the summary jury trial, its legal foundation and the changes needed in order for it to survive. Author reviews the benefits of the summary jury trial and the issues threatening its effectiveness. Author examines a proposed federal summary jury trial statute and argues for its adoption.

NON-BINDING RECOMMENDATION PROC- SUMMARY JURY TRIAL.

Wrappe, Steven C.. "The IRS expands use of alternative dispute resolution". Tax Notes; May 8, 1995; 67(6):pp. 801-806.
Article discusses recent improvements to IRS administrative appeals process, which includes detailed descriptions of Early Referral Procedure, Accelerated Issue Resolution and Advance Pricing Agreements. Author also comments on Tax Court Rule 124, which allows voluntary binding arbitration of factual issues before Tax Court, and IRS initiatives to use mediation in both docketed and appellate cases. Article concludes by suggesting that use of ADR techniques may eventually be used beyond the resolution factual disputes.
ARB: MANDATORY, COURT-ANNEXED- GENERAL/ SUBJ MATTER: TAX.

Wright, Ellen. "Dispute Settlement Centre - BBB". Alberta Law Review. October, 1995, 34(1): pp. 290-291.
Article describes an entity called the Dispute Settlement Centre - BBB that was created by the Better Business Bureau in November 1992 to provide mediation and arbitration services to consumers and businesses in Southern Alberta. The article briefly describes the Centre's mediation and arbitration services and then concludes by listing disputes not handled by the Centre.
MED: RELATED PROCESSES-GENERAL/ ARB: BINDING ARB-GENERAL/ SUBJ MATTER: CONSUMER.

Yarn, Douglas Hurt. "Commercial arbitration in Olde England" (602-1698). Dispute Resolution Journal. January, 1995, 50(1): pp. 68-72.
English courts in the Middle Ages began to refer merchant disputes to arbitration when complicated and specialized issues required it. Author traces the origin of commercial arbitration in the English system and gives specific examples. The commingling of arbitration and litigation at the time is also examined.
SUBJ MATTER: COMMERCIAL/ COMPARISONS: HISTORICAL.

Younger, Stephen P. "Effective representation of corporate clients in mediation". (Symposium on Business Dispute Resolution: ADR and Beyond). Albany Law Review; SPRING, 1996; 59(3): pp. 951-61.
Article offers lessons on how to represent corporate clients effectively in mediation, including: informing the client early on about mediation options, describing the mediation process to the client, knowing the mediator, selecting the best client representative, developing client's negotiation strategy, exploring the interests of both sides, and tips on speaking directly to the client on the other side.

MED: RELATED PROCESSES-GENERAL.

Yu, Gyu-Chang; and Gregory G. Dell'Omo. "Differences in decision making between experienced judges and inexperienced judges in dispute resolution: the case of final-offer interest arbitration." Journal of Collective Negotiations in the Public Sector. Spring, 1996, 25(2): pp. 137-156.
Article details findings of study in which 32 hypothetical final-offer interest arbitration cases were presented to both professional arbiters and graduate students serving as inexperienced arbiters. The resulting data appears to indicate that while there were no substantial noteworthy individual differences among professional arbiters, the inexperienced arbiters placed greater emphasis on comparability standards, such as wage comparisons. Author suggests that such findings indicate unconscious processing of information by experienced arbiters and potentially cast doubt on past findings concerning arbitral decision-making.
QUALITY CONTROL.

Zipper, Steven M.. "Legislatively Mandated Arbitration in Oregon: the Unconstitutionality of the Uninsured Motorist Arbitration and Personal Injury Protection Arbitration Statutes". Willamette Law Review. Summer, 1995, 31: pp. 737-755.
Article describes Oregon case law and statutes, which address legislatively mandated arbitration and appraisal clauses in insurance contracts. Author notes the effect of the clauses on the right to a jury trial. Author examines a holding by the Oregon Supreme Court that arbitration is a condition precedent to litigation under the old motorist statute. Author argues that legislatively mandated arbitration provisions are unconstitutional, because they limit the right to a jury trial.
ARB: BINDING ARB- GENERAL SUBJ MATTER: INSURANCE.

Zoancewicz, William P.. "Alternative dispute resolution in the personal injury forum." The University of Memphis Law Review. Spring 1996, 26(3): pp. 1169-86.
Article addresses how alternative dispute resolution can be utilized in personal injury claims with less costs and more efficiency than litigation. Author discusses the use of nonbinding mediation and binding arbitration in personal injury disputes. Author concludes that ADR should be used instead of litigation in personal injury cases for several reasons including avoidance of time delays, fewer expenses, cultivation of a productive and cooperative attitude between parties, and greater satisfaction of the parties.
SUBJ MATTER: OTHER TORTS/ ECONOMIC ADVANTAGES OF ADR.

Zwerling, Harris L. and Terry Thomason. "Are Public High School Principals Paid According to Their Performance and Working Conditions?" Journal of Collective Negotiations in the Public Sector. Summer, 1995, 24: pp. 219-232.

Article reports on a nationwide survey of public high schools, from the Adminstrator and Teachers Survey of the High School and Beyond. Author determined that principals' salaries are affected by the maximum teachers' salary, the principals' experience and factors relating to district size, wealth and cost of living. Author finds that student performance indicators affect principals' salaries. Author argues that the survey results should be examined cautiously.

SUBJ MATTER: EDUCATION